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GOVERNMENT OF INDIA.

REVENUE AND AGRICULTURAL DEPARTMENT.

PART I.

Extracts from Regulations and Correspondence relative to the Permanent Settlement.

PART II.

Extracts from papers regarding the Amendment of the Substantive Law of Rent in Bengal. From March 1875 to appointment of Rent Commission.

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BENGAL SECRETARIAT LIBRARY

I.—*Extracts from Colebrooke's Supplement to the Digest of the Regulations and Laws enacted by the Governor General in Council. Edition 1807.*

Extract from Instructions to Supervisors appointed to collect information concerning the revenue, &c. in each district (16th August 1769.)

As the Board have judged it expedient to appoint Supervisors on behalf of the Company in each particular province, with a view to ascertain in a minute, clear, and comprehensive manner, a variety of circumstances which intimately concern the welfare of the country; the province of is hereby placed under your inspection, and the following objects are pointed out and distinguished under respective heads, as a direction for your conduct, and an explanation of the service expected from you in your department.

1. A Summary History of the Province.

You are to collect, under this head, the form of the ancient constitution of the province, compared with the present; an account of its possessors or rulers, the order of their succession, the revolutions in their families, and their connections; the peculiar customs and privileges which they, or their people, have established and enjoyed; and, in short, every transaction which can serve to trace their origin and progress, or has produced any material changes in the affairs of the province.

2. The State, Produce, and Capacity of the Lands.

The first measure which should occur to your attention in an inquiry of this nature, is to procure a complete hustabood, or rent-roll, with the number of begahs, or measures of land, contained in each district, according to the original surveys and measurements, and the method in which they were laid out and appropriated. The next is to fix the ancient boundaries and divisions. This being completed, you may proceed to trace the alterations which chance, favour, art, or oppression, have gradually produced in the face of the country until the present time. Many portions of land have been added to, or separated from, the ancient divisions; these should be rigidly scrutinized and carefully noted. The zemindars have enjoyed considerable tracts rent-free, on various pretences and for various purposes. The abuses in the bestowal and sale of talooks are notorious, being generally the reward of the creatures of Government, obtained by unwarrantable means and held with extraordinary immunities. The titles of the present possessors should therefore be examined, together with the valuations of such lands before they became talooks, and before their owners acquired that independent footing; so that some judgment may be formed of their real revenue, and in what degree the limitation of the grant is exceeded by the quantity now held. Charitable and religious donations, which successive Princes have made, many through zeal, but most through vanity, form no inconsiderable part of some districts; and as it may reasonably be supposed, that in a course of years the produce of such benefactions has been misapplied and perverted, or that the particular persons or societies, in whose support they were granted have fallen or decayed, it is expected that you diligently search into and report their true state. You are also to particularize the extent, production, and value of jagheers; the titles of the present possessors, &c., as in the talooks: of the lands called khas, which are under the immediate superintendence of Government, for want of farmers: of the comar, which are lands cultivated by contract: of the ryoty, which are tenanted and cultivated by the natives on the spot. and of the waste lands, distinguishing such as are cleared, and have been neglected through a decrease of population, from such as are covered with jungle.

These informations, provided they be derived from genuine authorities, and confirmed by an accurate inspection of your own, will enable you to compute what the productions of the country, deducting the consumption of the inhabitants, will yield for the purpose of commerce; and how far the wealth and prosperity of it may be augmented by an encouragement being given to the culture of any particular article, either as a necessary of life, or as a material in manufactures.

3. The amount of the Revenues, the Cesses, or arbitrary taxes, and of all demands whatsoever which are made on the Ryot, either by Government, Zemindar, or Collector, with the manner of collecting them; and the gradual rise of every new impost.

One capital grievance being the inequality of assessments arising from the multitude of talooks and sequestered lands above mentioned, you are to penetrate through the chicanery of those employed, and acquire an exact detail of every particular tax or cess; noting in what

particular part of the country the burthen falls, where partial exemptions are allowed, and what is the equitable proportion to the whole. Another grievance, which is equal to the former, is the variety of demands which the collectors, from the aumil and zemindar to the lowest pyke, impose without any colour or license from the Government; some of which have been so long exacted and paid, that the ryots begin to imagine the oppression is sanctified by Government, and is not the mere fraud of the collectors. The multiplying of superfluous agents and inferior collectors may be also deemed a source of extortion; and it is a very essential part of your duty to inform yourself in what respect their numbers have been causelessly increased; to enumerate their perquisites, and how much they may be supposed to exceed them; as likewise the expense and arrangement of gauts and public markets, with the duties collected at each upon the inhabitants or traders, and the application of sums to be levied.

Darogahs, cutwalls, and pykes, maintained for the protection of the tenants, are, it is to be feared, too often the instruments of their oppression; at least fall very short of answering the end proposed by them. Accounts should be taken of their number and expense, how they are arranged, and how paid.

A third and equally important object of your attention, under this head, is to fix the amount of what the zemindar receives from the ryot as his income or emolument; wherein they generally exceed the bounds of moderation, taking advantage of the personal attachment of their people and of the inefficacy of the present restrictions upon them; since the presence of the aumil more frequently produces a scene of collusion than a wariness of conduct. When the sum of the produce of the lands, and of each demand on the tenant, is thus ascertained with certainty, the proportion of what remains to him for the support of his family, and encouragement of his industry, will clearly appear and lead us to the reality of his condition.

Amongst the chief effects which are hoped for from your residence in that province, and which ought to employ and never wander from your attention, are to convince the ryot that you will stand between him and the hand of oppression; that you will be his refuge and the redresser of his wrongs; that the calamities he has already suffered have sprung from an intermediate cause, and were neither known nor permitted by us; that honest and direct applications to you will never fail producing speedy and equitable decisions; that, after supplying the legal due of Government, he may be secure in the enjoyment of the remainder; and finally, to teach him a veneration and affection for the humane maxims of our Government. *Pages 174—176.*

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The Comar lands, having no native tenants, are cultivated by contract. The custom and terms of contract are various in various districts, but, in general, there is one settled rule. An advance in money is made by the zemindar to the cultivator, by the help of which he tills and improves the land. When the crops are cut and gathered in, they are generally divided between the cultivator and the zemindar; from one-third to one-half to the cultivator, and the remainder to the zemindar; when the former accounts with the latter for the amount of the advances, which are often taxed by the zemindar with an heavy interest, or fraudulently exceeded by an arbitrary valuation, far below the market price of the goods or products of the lands, in which he is paid. Your object is to inform yourself what the cultivator really receives for his labour, and in what he is injured; and secondly, what the zemindar embezzles and secretes from Government by an under-valuation of the productions of the soil which he thus receives, sinking the amount of the returns; and by other means, which serve to deceive us, and obstruct the progress of cultivation in these lands. In all which, I apprehend, you will find no difficulty if you only ascertain the amount and market price of these products, and compare them with what the zemindar brings publicly to the credit of Government; and comparing the accounts of the zemindar with those of the cultivator, it will expose the total of his undue acquisitions, enable you to penetrate through the arts of concealment, and give you a thread by which to unravel the whole gradation of collusive fraud in this particular. As the unequal diffusion of inhabitants has been the cause of this scarcity of cultivation in different parts, every expedient should be used to encourage people to settle on the Comar and waste lands that they may be converted into ryoty. The great towns whose populousness only serves to propagate poverty and idleness, might undoubtedly afford numbers of useful hands, who in their present situations are either a burthen or a pest to the community. These should be sought out, and taught to apply to culture, setting such prospects and expectations in their view, as will engage their consent. The talooks and jagheers will likewise be found to contain many idle, and these unserviceable, hands; who may, in like manner, be induced to transplant themselves to these lands, and become farmers.

Lastly, I shall speak of the ryoty lands. The quantity in measurement, as well as revenue, will appear from the several pottahs granted, after the inquiry before recommended;

and the amount product in kind you will acquire by ascertaining what is really produced on some portions of land of each different soil, which you may select for this purpose, and so draw a general medium of the product of the whole ryoty.

This you may further check by a comparison of the amount total with that of the Comar, which being received in kind by the cultivator and landlord, the aggregate may be more truly and readily known. In the same manner, the produce of jagheer lands, talookdaries, and lands for religious purposes, may be also obtained.

You will doubtless readily meet with an account of waste or uncultivated lands, as they stand recorded in the Cutcheries; but here you will probably find a large field of collusion; for whatever lands have been once wrote from the revenue under this head, though possibly deserted but for a short time, little has seldom been brought on again to the public credit. This will appear by your taking accounts of the waste lands, as they stand recorded at different periods of time, and from them noting their gradual increase or decrease. Nothing can ascertain the present state of those lands so well as a local investigation. You will probably find them to be a fund to the zemindar, or collector, for their creatures or dependents, who enjoy many flourishing and fertile tracts thus denominated; all which should be immediately resumed.

Having thus clearly distinguished the amount measurement of the several lands, and their products of kinds, as also the land revenue, the cesses, or arbitrary taxes, must engage your attention. On these subjects I have already spoken in part, and shall now consider what is yet to be done by you.

The truth cannot be doubted, that the poor and industrious tenant is taxed by his zemindar, or collector, for every extravagance that avarice, ambition, pride, vanity, or intemperance may lead him into, over and above what is generally deemed the established rent of his lands. If he is to be married, a child born, honours conferred, luxury indulged, and nuzzerannas, or fines, exacted, even for his own misconduct, all must be paid by the ryot. And, what heightens the distressful scene, the more opulent, who can better obtain redress for imposition, escape, while the weaker are obliged to submit.

To obtain an account of these cesses, or imposts, there cannot be a more certain method than what I have before recommended of getting from the ryot himself a statement of what he actually pays over and above his established rents, and from this you are to draw a medium amount of the cesses levied upon the whole. This should be set against the amount of the established rents of lands so cessed. You are then to obtain the amount revenue of all jagheers, talooks, charitable and religious donations; and inform yourself whether they bear any part, and what proportion, of this burthen, in order that a comparative view may be drawn of the partiality of these cesses, and what proportion they bear to the lands and revenues of the whole province. (*Pages 183—184.*)

Extract from instructions for the settlement and collection of the revenue (14th May 1772)

1st.—That the farms shall be let for the fixed term of five years, to commence from the 1st of this instant, Bysack 1179, or the 10th April 1772.

2nd.—That the farms shall consist of entire pergunnas, provided they do not exceed the annual amount of one lakh of rupees; in which case, they shall be divided into such equal proportions, as shall reduce the amount of each considerably below that sum, unless the acknowledged responsibility and good character of the farmer shall support his pretensions to rent the whole pergunna; and that all villages or portions of lands, which have been hitherto let in separate farms, shall be re-annexed to the pergunnas to which they originally belong. *Page 190.*

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6th.—That as the Company have determined to stand forth as dewan, the servants employed in the management of the collections shall be henceforward styled "Collectors," instead of the present appellation of "Supervisors." (*Page 191.*)

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10th.—That the farmer shall not receive larger rents from the ryots than the stipulated amount of the pottahs on any pretence whatsoever; and that for every instance of such extortion, the farmer, on conviction, shall be compelled to pay back the sum which he shall have so taken from the ryot, besides a penalty equal to the same amount to the Sircar: and for a repetition, or a notorious instance of this oppression on his ryots, the farmer's lease shall be annulled. (*Page 191.*)

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12th.—That no mhatoots or assessments, under the name of mangun, baurie gundee, sood, or any other abwab or tax, shall be imposed upon the ryots; and that those articles of abwab

which are of late establishment, shall be carefully scrutinized, and at the discretion of the Committee abolished, if they are found in their nature to be oppressive and pernicious. (*Page 92.*)

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lan for the ettlement of e Revenue of Bengal and Behar, for the Bengal year 1188; formed by the Committee of Revenue, and submitted by them to the Honourable the Governor General and Council, the 29th March 1781.

The Honourable Governor General and Council having directed the Committee to form and lay before them a plan of a settlement for the ensuing Bengal year 1188, they now proceed to take these orders into consideration.

With a view to the execution of these orders, the Committee have directed such accounts and materials to be prepared, as they judged useful to give them information respecting the capacity, situation, and extent of the several districts, and the peculiar circumstances which have operated during some years past, to occasion either improvement or decay in the revenues of each; an attention to which can alone enable them to form a plan capable of being reduced to practice: most of these accounts are now ready for their inspection, and the remainder will soon be completed.

The two principal objects for consideration are, the amount of the settlement, and the form of it.

The amount of the assessment must depend on the capacity of the different districts. In some the assessment will be found already too great; others again, and the greatest part, will admit of an increase.

To proportion this assessment in such a manner as it may be realized, the value of the different districts must be ascertained: the Committee are of opinion, that this may be accomplished with a sufficient degree of accuracy, without entering into minute examinations or new local investigations.

The Committee have now accurate accounts of the settlement, receipts, balances, and remissions, from the year 1178 to the present time, as well as of the zemindarry and ijarredarry expenses; the aumeeny records will also furnish the hustabood accounts of many of the districts, from the year 1179 to 1183, and for a longer period if necessary.

In following the information to be obtained from these records, the Committee cannot greatly err in fixing the amount of the assessment, particularly as they will add to this the information to be obtained from all mutsuddies or others employed in the collection and management of the revenues. The character and capacities of the zemindars, farmers, and others, who have had charge of the collections, will also be taken into consideration, as being useful in some cases to ascertain whether the non-payment of the rents of any particular place has been owing to the fault or incapacity of the person employed, or to the want of funds in the district.

In comparing these several accounts and information, they propose taking some data as a ground-work to proceed upon. The method, which appears to them the simplest and easiest, is, to take the highest actual collections that have been made in any one year from 1178 to the present time, and from an examination of the remissions which have since been granted and a comparison of the hustabood accounts, and the receipts of other years, to form a judgment as to the cause of the decrease of the jumma, which has since appeared, and pass a decision, whether that amount should be continued, decreased, or increased. An attention alone to the remissions granted, will afford them very satisfactory information, by shewing the nature of them, and whether they have proceeded from temporary causes, or others which have a lasting and permanent effect; and an examination of the charges will also shew how far additions may be effected from retrenchments.

The amount of the settlement being thus ascertained, the mode of it is next to be considered.

Three modes of settlement prevail in the country:

To leave the lands to the zemindars, or to farmers, to keep them Khas.

The Committee are of opinion, that it will not be advisable to give either of these modes an exclusive preference to the rest, but adopt them severally as circumstances may require.

The mode which appears to the Committee the most convenient, and secure for the Government, and the best for the ryots and country, is, in general, to leave the lands with the zemindars, making the settlement with them; particularly in the larger zemindarries, such as Nuddea, Rajshahy, Dinagepore, &c. The considerations which ought to preclude the zemindars are, their gross mismanagement, oppressions, or incapacity.

Where women or minors are zemindars, the Committee think some method should be adopted to prevent the confusion ordinarily arising from this circumstance, by fixing a responsibility upon some person to whom they can constantly have access, and upon whom

they can enforce the orders of Government. This may be effected by joining with them in the management their principal executive officer, either as malzamin, or by making him annex his seal to the agreement signed by the zemindar, binding himself to pay up the revenues kist by kist, as was formerly the usage; so that his own private fortune being rendered responsible for the public revenue, it may become his interest to manage the affairs of the district with attention and economy, and to discharge punctually the amount of the monthly kists: without such responsibility, the executive officer of Government will always meet with difficulties in realizing the revenues. It is true, that all the lands may be sold for the payment of the rents; but it would be hard to adopt so rigorous a measure when the zemindar is known to have had no share in the management, and when the deficiencies have been occasioned by the incapacity or dishonesty of the executive officer.

After the amount of the settlement to be paid by any zemindar has been fixed, it will only remain to call upon the zemindar to conclude the engagement, by signing his cabooleat. If he should demur when the requisition is made to him, or make any evasions, as it is probable will be the case in many instances, the Government should lose no time in compelling him to obey their orders, by sending, a sezawul to take charge of his zemindarry, or by putting it into the possession of a wadadar, or letting it in farm. As the assessment will be regulated with impartiality and all possible exactness, there can be no injustice in obviating by a decisive conduct, evasions calculated to frustrate the orders of Government.

With respect to farmers, the principle upon which they may be introduced may be assigned as follows: several divisions contain a number of petty talookdars, with whom a settlement has been made by the Government itself; such divisions, and particularly such parts of them as are either now immediately under the Committee, or are to be put under them, should be let to farmers; as the Committee would otherwise be greatly embarrassed and impeded in their general business, by being obliged to enter into the detail of a number of petty farmers and talookdars.

As soon as a judgment has been formed respecting those districts or pergunnas which are to be let to farm, advertisements should be put up, giving notice, that sealed proposals will be accepted for the farm of them; the Committee reserving to themselves the power of rejecting such offers as may be deemed inadequate, or such as are made by people who want knowledge or responsibility.

With respect to the period of the leases in general, it appears to the Committee, that to limit them to one year will be the best period, giving a preference at the settlement of the next to such persons as shall have paid up their rents, and making a promise of this on the part of Government.

One or other of the considerations specified, will include most, if not all, of the districts in Bengal. It may be necessary however to ask, who is to make the settlement. It would be difficult to fix any general rule for this, which would not be liable to exceptions. The Committee should execute this task themselves in as many cases as they can; in some perhaps it would be most expedient to leave the detail of this with the Collector, or the officer of Government.

These are the general principles which occur to the Committee, and, as they have already given their attention, both separately and collectively, to the several points from which these principles have been deduced, and the cases in which they are to be applied in practice, they are ready to commence the fixing the new assessment, and the persons who are to pay it, as soon as the Governor General and Supreme Council shall have given their orders on the plan.

Extract of a letter from the Governor & General and Council to the Committee of Revenue, dated the 30th March 1781.

We approve of the whole of the plan which you have recommended, of a settlement for the ensuing Bengal year 1188, excepting that part in which it is proposed in some cases to leave the detail of the settlement with the Collector, or the officer of Government; of this we cannot approve in any case, as we conceive it to be inconsistent with the office of the person who is to have the collections of the settlement, upon the settlement formed, that he should have any concern in the formation of it: we therefore direct, that for such mehals as cannot be immediately settled by you with the zemindars, or persons deputed by them, persons be expressly deputed from the proper offices to form the settlements upon the spot; and that these be also made, and finally confirmed, by yourselves.

Although we approve of the general principles on which you propose to regulate your conduct in the formation of the settlement; yet, as it is our desire to remove every interference and embarrassment from the present system of control, render it uniform, and afford every relief and ease both to the ryots and to the zemindars, which may be consistent with it and conformable to the ancient constitution of the country, we recommend it to you to give all due encouragement to such applications as you shall receive from the zemindars, for the

payment of their rents immediately to the khalsa, for the restoration of their ancient jurisdiction, and the consequent abolition of that of the foujdarry, and for the settlement of a fixed revenue during the lives of the actual incumbents; in these points we are desirous to afford every indulgence to the zemindars; but shall expect in return an increase of their revenue, bearing some portion to the advantages which the zemindars will themselves derive in point of revenue from them. We think it sufficient thus briefly to suggest this deviation from your general plan, leaving it to your judgment and discretion to apply it.

We recommend it to you to use the utmost expedition in concluding the settlement, transmitting the amilnamahs as usual to us. (*Pages 220—224.*)

General Regulations for conduct f Collectors assed on 8th une 1787.

XXXV. That the Collector do give the most unremitted attention to ascertain the rules and rates of assessment on the ryots under his jurisdiction, and endeavour to fix upon some mode by which they may be regulated on general, fair, and ascertained principles. (*Page 259.*)

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L. That whereas notwithstanding the orders of Government in the year 1772, prohibiting the imposition of muthote or assessment, under the names of mangun, hauldaurree morocha, bazee jumma, or sood, or any other new articles of taxation, various taxes have been since imposed, the Collector is strictly enjoined to enforce this article, and prevent the imposition of any new taxes upon the ryots; and if hereafter any new taxes should be imposed, the Collector, on proof of such extortion, is to decree double the amount thereof to the party injured, as costs of suit. (*Page 260.*)

Extract of a letter from the Governor General in Council to the Board of Revenue, 5th February 1787.

One of the principal objects of the 39th section of the Act passed in the year 1784 is to settle and establish upon principles of moderation and justice, according to the laws and constitution of India, the permanent rules by which their tributes, rents, and services shall be in future rendered and paid to the Company by the ryots, zemindars, polygars, talookdars, and other native landholders.

With a view to this point and in conformity to the orders of the Court of Directors, it is our intention, as soon as sufficient materials and information shall have been obtained for that purpose, to settle a permanent revenue with each zemindar for a long term of years.

But we are of opinion that the period is too short for undertaking this settlement, at the commencement of the ensuing Bengal year, particularly as after the conclusion of such a settlement, it is determined to leave the landholder in the uninterrupted management of his district, without renewing inquiries into the value and produce of his lands.

We direct, however, that you keep this object constantly in view, and as preparatory to it, that you ascertain, as correctly as the nature of the subject will admit, what are the real jurisdictions, rights and privileges of zemindars, talookdars and jagheerdars, under the constitution and customs of the Muhamedan and Hindoo governments, and what were the tributes, rents, and services which they were bound to render or perform to the sovereign power; and in like manner those from the talookdars, to their immediate liege lord, the zemindar, and by what rule or standard they were or ought severally to be regulated.

These points will be best attained by a series of queries drawn out by you, accommodated to real circumstances, and proposed to the most intelligent and experienced natives under your authority, either by yourselves, or the servants stationed in different parts of the provinces, and you will transmit to us their several answers with such further illustrations as will arise from your own experience and observation, or on a comparison of the documents before you.

For the present, we direct that the settlement of 1194 be made for the period of one year only, and during the progress of it you will endeavour to collect the information above described, as well as what relates to the value of the lands, existing abuses, or other matters which it may be necessary to consider, arrange or determine previous to the formation of a permanent jumma.

As soon as the plan for the arrangement of the country into Collectorships shall have obtained our sanction, you will send orders to the different Collectors to form the settlement with the zemindars and farmers under their respective jurisdictions.

The settlement in every practicable instance is to be made with the zemindar; but as various objections may be against a zemindar, which will render a deviation from this general rule in their favour, indispensable, such as incapacity from age, sex, or lunacy, contumacy or notorious profligacy of character, we authorize you to exercise a discretion, in the choice of the persons with whom the settlement is to be made, where such objections exist, and to delegate

the power of exercising the same discretion to the Collectors by whom the settlement is to be made, subject nevertheless to your revision and control.

In such instances a discreet and reputable relation, by way of guardian or Dewan, is to be preferred before any temporary farmer, or servant of Government; but we know that there are great difficulties in the matter, and that cases may occur in which the letting the lands to a farmer is the only means of securing the revenue of Government, and preserving the inheritance of the zemindar inviolate: you will therefore, where such cases do occur, regulate your conduct by the exigency of the case.

But wherever these deviations from our orders or recommendations take place, you will be careful to record them, as well as the reasons on which they are founded, for our information.

We think it necessary to inform you, that the construction put upon the statute by the late Government, in consequence of the queries submitted to them by your Board previous to the settlement of 1192 has received the approbation of the Court of Directors, and we therefore recommend it to your attention; they also in general approve the principles laid down in your address of the 12th April 1784.

With respect to the jumma of the ensuing year we leave it to you to fix the amount payable by the respective renters. In general, we conceive that the present assessment may be deemed fair for the Government to exact and the renters to pay: some variations may possibly be necessary; but, in all cases where remissions upon the Jumma appear indispensable, we direct that the reasons for them be particularly stated for our information, and that no settlement with such remissions be deemed confirmed until it has been reported to us and received our sanction.

We are sensible that many Regulations are requisite to correct the abuses that prevail in the internal detail of the collections, to prevent the oppressions exercised by the zemindars and farmers over their under-renters, or to afford precise means of detecting and punishing them when committed, and to put an end to the collusions practised by the mofussil renters upon each other, or by the putwarris and ryots upon the zemindars. How far you may be able to establish such Regulations in the settlement of the ensuing year, we cannot determine, but we recommend them to your attention, that you may carry it into execution, as far as the time left to you, and the information you have obtained, will admit. We particularly desire that you will pay attention to model the khistbundies of the renters, so as to make the sudden demands correspond with the mofussil payments. (*Pages 347—349.*)

Extract of section 39 from Act XXIV Geo. III., cap. XXV (an Act for the better regulation and management of the affairs of the East India Company, and of the British possessions in India; and for establishing a Court of Judicature for the more speedy and effective trial of persons accused of offences committed in the East Indies).

XXXIX. And whereas complaints have prevailed, that divers rajahs, zemindars, polygars, talookdars, and other native landholders within the British territories in India have been unjustly deprived of, or compelled to abandon and relinquish, their respective lands, jurisdictions, rights, and privileges, or that the tributes, rents, and services required to be by them paid or performed for their respective possessions to the said United Company, are become grievous and oppressive: and whereas the principles of justice and the honour of this country require that such complaints should be forthwith inquired into and fully investigated, and if founded in truth, effectually redressed: be it therefore enacted—That the court of directors of the said united company shall, and they are hereby accordingly required, forthwith to take the said matters into their serious consideration, and to adopt, take, and pursue such methods for enquiring into the causes, foundation, and truth of the said complaints and for obtaining a full and perfect knowledge of the same, and of all circumstances relating thereto, as the said court of directors shall think best adapted for that purpose; and thereupon, according to the circumstances of the respective cases of the said rajahs, zemindars, polygars, talookdars, and other native landholders, to give orders and instructions to the several governments and presidencies in India, for effectually redressing, in such manner as shall be consistent with justice and the laws and customs of the country, all injuries and wrongs which the said rajahs, zemindars, polygars, talookdars, and other native landholders, may have sustained unjustly in the manner aforesaid, and for settling and establishing, upon principles of moderation and justice, according to the laws and constitution of India, the permanent rules by which their respective tributes, rents, and services shall be in future rendered and paid to the said united company by the said rajahs, zemindars, polygars, talookdars, and other native landholders.

II.—Extracts from Volume I of "Selections of Papers from the Records at the East India House," 1820.

Minute by the Governor General (Warren Hastings) regarding the appointment of Superintendents (1st November 1776).

In whatever manner it may be hereafter determined to form the new settlements of the provinces after the expiration of the present leases, it will be equally necessary to be previously furnished with accurate statements of the real value of the lands, as the grounds on which it is to be constructed. To obtain these, will be the work of much official knowledge, some management, and unremitted labour in compiling and collecting the accounts of the past collections, in digesting the materials which may be furnished by the Provincial Councils and Dewans, in issuing orders for special accounts and other materials of information, and in deputing native officers on occasional investigations. It is impossible for the Board to conduct a business of such detail, neither can it be left wholly to the provincial councils: it requires uniformity in the design, authority in the execution, and an extraordinary share of responsibility, to animate the zeal of those who are entrusted with the charge of it.

I therefore propose that a temporary office be constituted to execute this business under the conduct of one or two covenanted servants of the Company, assisted by a Dewan or other officers, either selected from the officers of the khalsa, or occasionally chosen for special commissions; that for the sake of dispatch, all orders issued from this office, for the execution of such particular services as shall have received the general sanction of the Board, be written in the name of the Governor General, and the control of it be committed to his immediate charge.

Besides the immediate duty of this office, which I have above described, and which I suppose to be indispensably necessary and essential to the formation of an equal settlement, many other points of inquiry will be also useful, to secure to the ryots the perpetual and undisturbed possession of their lands, and to guard them against arbitrary exactions. This is not to be done by proclamations and edicts, nor by indulgencies to the zemindars and farmers. The former will not be obeyed, unless enforced by regulations so framed as to produce their own effect without requiring the hand of Government to interpose its support; and the latter, though it may feed the luxury of the zemindars, or the rapacity of the farmers, will prove no relief to the cultivator, whose welfare ought to be the immediate and primary care of Government.

The design of establishing new pottahs for the ryots, the failure of which has been often objected to as a reproach on the late administration, has been tried with equal ill success by the present, in their late settlement of Burdwan; where, notwithstanding the solemn engagement of the zemindar, and the peremptory injunctions of Government, not a pottah has yet been granted (if my information is true, and it may easily be proved), nor will be granted, of a different tenure from those which have been customary for some years past, unless more regular means are taken to produce them. Future effects may be concluded from such simple causes without the spirit of prophecy. It is the interest of the zemindar to exact the greatest rent he can from the ryots; and it is as much against his interest to fix the deeds by which the ryots hold their lands and pay their rents, to certain bounds and defences against his own authority. The foundation of such a work must be laid by Government itself: all that I would here propose is, to collect the materials for it, by obtaining copies of the present pottahs, and of the neric-bund, or rates of land, by which they are regulated in each district, and every other information which may throw a light on this subject, and enable the Board hereafter to establish a more permanent and regular mode of taxation. (*Page 436.*)

Minute by Mr. Francis, 5th November 1776.

I have considered the Governor General's proposal for the institution of a new office in the Revenue Department, for the purposes therein described, with the strictest attention, and with every disposition which the Governor General himself could wish to impress upon me, to co-operate with him in the plan and execution of the ensuing settlement. 'I deem it my duty, in the first instance, to deliver my sentiments freely on every measure which has relation to this important subject; in the next, to assist even in the conduct of arrangements which I may not approve, and to promote their success when once they are resolved on. In this respect, my conduct, after a resolution taken, will not be affected by the opinion I may express in a previous debate. The Governor has been long acquainted with my general opinion on the subject of a permanent settlement, and I persuade myself, will not attribute my disapprobation of the proposal now before me to any other motives but those which I profess.

If nothing else were in question but the institution of a temporary office for the despatch of a voluminous and intricate business, to collect and methodize confused materials, and to make inquiries, or to issue orders purely of detail, in the name of the Governor, under the general sanction of the Board, I should yield to it without difficulty, whether convinced or not of the utility of the institution. The person on whom the principal share of responsibility will fall ought to be assisted, in that way in which he may chiefly think he wants assistance.

My objections go to the avowed and implied principles of the plan, in the formation of which the new office is to be employed. I collect the principles of the Governor's plan from the inquiries he intends to make. The nature of the information he proposes to obtain suggests to me the only purpose to which it can be applied; it is possible, however, that I may be mistaken in both instances.

First proposed object: "To be previously furnished with accurate statements of the value of the lands; and these to be obtained from the accounts of the past collections, from materials furnished by the provincial councils, from special accounts and other materials of information, and by deputing native officers on occasional investigations."

I would first ask, what is the purpose of this accurate valuation of the lands? Is it meant to exact from the people the utmost revenue they can possibly pay; or shall we content ourselves, once for all, with such a revenue, as the services of the Government, constituted as it is at present, indispensably require?

If the first was a just or attainable object, it ought to have been effected by the Committee of Circuit's settlement. The lands were let to the highest bidders, without any other consideration, for the avowed purpose of ascertaining the utmost revenue which Government could obtain from them. The actual collections made on this plan ought, therefore, to be admitted as the test of what the country, upon the whole, will pay. In this sense, I am convinced it will prove too much, because no fair conclusion can be drawn from a temporary rack-rent to a permanent revenue.

If, at this time, any more particular informations are necessary, I wish to know of what nature they are, and from what sources they are to be procured. Will the farmers, or any of their agents, furnish us with accounts of their actual collections? That is, will they make us acquainted with their profits, merely because we ask them; especially after all of them have applied for remissions, and many have obtained them? Hitherto, their communications to Government exhibit nothing but loss, deficiencies, balances, and the necessity of remissions. If they give us any mofussil accounts whatsoever, we may be assured that such accounts will be falsified. Neither can we expect more credible information from the zemindars, whom we have dispossessed of the management of their lands, and removed from any concern in the collections, or whom we have reduced to the condition of farmers, and of course obliged to act upon the same principles. These are the very last people from whom, in their present circumstances, we have any right to expect any assistance. A system of taxation, which avowedly aims, or is supposed to aim, at raising the greatest possible revenue, is in its nature hostile to every species of private property, and tends to make every proprietor an enemy to Government. To such a system the people of this country have nothing to oppose, but a concealment of whatever means or fortune they have left. This is their only and last defence; and this, it is supposed, will not be given up without difficulty, upon the first attempt of Government to penetrate through it.

But perhaps it is meant to obtain the proposed accounts from the ryots themselves. In that case, some millions of the lowest order of the people are to be separately asked, what each of them has paid, in any given period, to the farmer or collector immediately above him, and Government must not only confide in the truth of his answer, but in the exactness of the report of it. Now, I apprehend, it is not for the interest of the ryot to speak the truth, in any case in answer to such an inquiry. If he supposes it made for the purpose of giving him relief, he will exaggerate his distresses and the oppression he labours under. But as his experience is not likely to suggest that idea to him, and as diffidence, distrust in Government, and fear of any alteration, are the first principles of action with the natives of all ranks, he will probably suspect that the inquiry is not made for his benefit, but either with a view to load him with new taxes, or to continue him at the utmost rate he had ever paid. In this case, he will sink the amount of his actual payments, lest what he is able to pay in future should be determined by what he has paid heretofore.

Let it be supposed, nevertheless, that by some means or other, all difficulties are overcome, and that we are in possession of exact copies of the accounts of the mofussil collections: I then wish the Board to consider what an enormous mass of loose, confused, and intricate Bengally accounts will be thrown upon our hands, out of which two of the Company's covenanted servants, with the assistance of a few native officers, are to draw a clear distinct abstract of the actual collections of every village in the three provinces. All this must be done some time before April next; and Government is to be so well assured of the accuracy of the account, that we may safely make it the foundation of our settlement. The complex idea which the whole operation gives me is a union of confusion and impossibility, through which, I am confident, no human penetration can find its way.

In considering the object of the proposed accurate valuation of the lands, supposing it attainable, it appears to me that it would be useless, except for the single purpose of *levying the greatest possible revenue*. The valuation itself could only be true at one given point of time.

The proportionate value of land fluctuates, in all countries, according to the immediate industry or ability of the owners. In this country, more particularly, it depends on accidents of drought, inundation, or unfavourable seasons, of which no general calculation can be formed. But this object, I hope and believe, is not in contemplation. An attempt to annihilate all intermediate profits between the ryot and the Government, if it were just and reasonable in itself, I am confident would succeed, though it would be productive of mischief in many other senses. Oppression would still exact, and fraud pervert from the receipt of Government, those profits which we might endeavour to abolish; but in that case, instead of supporting the natural and lawful proprietors of the soil, they would sink with agents, collectors, and farmers, "a race of men who have no bowels for the contributors, who are not their subjects, and whose universal bankruptcy, if it should happen the day after their farm is expired, would not much affect their interest." The idea itself supposes the extinction of those successive ranks of subordination in society, through which the operations of Government descend, by regular and easy gradations, from the summit to the base. When the simple and natural channels of authority are quitted or discomposed, the State itself loses that shape and proportion, which constitute its strength and qualify it for duration.

What, then, is the present object of Government? We know the amount of our expenses, and we know in general what the country can pay: we also know, that in general it has been much over-rated. Our provincial councils are able to inform us, what particular districts have been favoured or oppressed, in what parts the collections have been realized without difficulty, and what districts indispensably requires relief. Our own constant experience tells us, that upon the whole there ought to be a remission. I admit that an assessment, formed on these grounds, may not be perfectly accurate or equal; but this inconvenience, whatever it may be, is neither capable of a remedy, nor does it deserve to be regarded. The inequalities of an assessment, in itself not excessive and intolerable, will soon level of themselves, provided all parties know *with certainty* the utmost they are to pay, and are assured they will not be exposed to an arbitrary increase of demands on future improvements. Without a fixed jumma, I affirm that no other measures whatsoever can save the country. A conquered province, especially at such a distance from the seat of empire, can have no other possible security against the ministers and representatives of the governing powers.

I am sensible that my opinion, on this or any other great political question, is no authority; I desire therefore to support it by those of men already in possession of the public respect and esteem. I fear no condemnation which may involve me with Doctor Smith, Sir James Stuart, and Montesquieu.

"It is no easy matter to frame the valuation of all the property of a country, and it is a scheme I should be very far from proposing, unless the spirit of a nation took such a turn as to wish it; but where a determinate sum has been in use, to be levied upon a certain district, it does not appear so difficult to make a proportional distribution of it according to equity, and to adhere, for the future to that distribution considering it as a *proportionate valuation* if not a *real* one. This is done every year, and without it no such tax could be raised. But when annual distributions are made, discontents constantly arise, and the pretended equality thereby observed produces worse effects than the inequalities which would follow from the other scheme because the change in the relative value of possessions would be then chiefly owing to the industry of every proprietor in improving his lot,"—*Vide* Sir J. Stuart's Inquiry into the Nature of Political Economy, Volume II, page 563.

"A fluctuating annual valuation, which is the case in France, produces numberless inconveniences; and upon the whole, they are far greater than those which it is intended to avoid.

"I agree, that the same land may be worth more one year than another; but it is impossible, by a fluctuating valuation, to ascertain that difference over a whole country to the satisfaction of every one, and although, by fixing it at one rate upon every possession, inequalities must take place, yet fixing it from rising in proportion to improvement will prove an encouragement to industry, which will greatly overbalance such an inequality. Every one then will be in the way of acquiring an addition to his income, free of land-tax; and if this be thought too great an encouragement to improvement, let the regulation be only fixed for a determinate time, suppose a century. This is no more than giving every one, as it were a lease of their land-tax for an hundred years; and experience shows that, without granting long leases, it is impossible that lands should ever be improved.—*Vide:* ibid. Volume II, page 578.

"The uncertainty of taxation encourages the insolence and favours the corruption of an order of men who are naturally unpopular, even where they are neither insolent nor corrupt. The certainty of what each individual ought to pay, is in taxation a matter of so great importance that a very considerable degree of inequality, it appears, I believe from the experience of all

nations, is not near so great an evil as a very small degree of uncertainty."—*Vide:* Dr. Smith's inquiry into the nature and causes of the Wealth of Nations, 4to. Vol. II, page 424.

"In forming a register of the different classes of landed property, it is very difficult to ascertain the several differences; and still more so, to find people who have no interest in mistaking them. This creates two kinds of injustice; that which is in the officer of Government, and that which is inherent in the thing itself. But if, on the whole the tax be not excessive, if it still leaves plenty to the people, these particular inequalities are of no moment. If, on the contrary, nothing is left to the people but what is precisely necessary for their existence, the least disproportion will be of the greatest importance."—Montesquieu, Book XIII, chap. 7.

The second object of the proposed office is, "to secure to the ryots the perpetual and undisturbed possession of *their lands:* and to guard them against arbitrary taxations. This is to be effected by new pottahs, formed on an inspection of the present pottahs and of the rates of land by which they are regulated in each district."

Before I enter further into the wide field which this part of the plan opens to me, I must clear it of an argument used by the Governor, which I think represents but a part of the fact it refers to. "It is asserted that not a pottah has yet been granted in Burdwan, notwithstanding the zemindar's engagement and the injunctions of Government."

The time limited for granting such pottahs is not escaped, and I do not yet despair of some degree of success for the rest. I shall content myself with remarking, that the measures of a divided council may be defeated by difficulties external to them, and that a failure proves nothing but that the entire strength and influence of Government did not accompany the execution. This, I fear, may happen in other instances, as long as the merits and success of one part of the administration can be interpreted as a reproach, or viewed with dissatisfaction by the other.

It is proposed *to secure to the ryots the perpetual and undisturbed possession of their lands.* This language, I know, is popular, and has been often used without any apparent benefit to the ryot, to countenance and give a colour to acts of violence and injustice against the zemindars and other superior ranks of the natives. The real question is not clear, perhaps, to every apprehension; but it is very material not to mistake it. Before we give perpetual possession, we ought to determine the property. This state does not consist of nothing but the ruler and the ryot; nor is it true, that the ryot is proprietor of the land. It is not even necessary that he should be so, either for his own benefit or that of Government. The scheme of every regular Government requires that the mass of the people should labour, and that the few should be supported by the labours of the many, who receive their retribution in the peace, protection, and security which accompany just authority and regular subordination. The supposed luxury of the zemindars is, I confess, a new idea to me. The rapacity of the farmers is not to be disputed; but it does not follow, that because the ryot has no direct permanent property in the lands, he should therefore have no right, or that no care should be taken to protect him. Without his assistance the land is useless to the zemindar. If they are left to themselves, they will soon come to an agreement, in which each party will find his advantage: the pottah is the evidence and security of this voluntary agreement. In the present state of the country, the ryot has, in fact, the advantage over the zemindar. Where so much land lies waste, and so few hands are left for cultivation, the peasant must be courted to undertake it. At all events, the interposition of Government between them should have no object but to enforce the execution of their respective engagements. To dictate the specific terms of every lease, is an invasion of the rights of property, in the first instance. It is a business of detail which no way belongs to Government, which we are in no sense equal to, and which carries a vexatious scrutiny and an arbitrary exertion of power upon the face of it. Government, after assessing the zemindar, or landlord, according to his portion of the public revenue, is supposed to enter into the management of his patrimony, and to prescribe to him the rates at which he shall be obliged to parcel it out to his tenants. The idea of *guarding the ryots against arbitrary exaction* is just and attainable though not by the method proposed; but I affirm that it is wholly incompatible with the principles of a Government, which claims and exercises a right of arbitrary taxation, and whose professed object is to exact the *greatest possible revenue* from the country. Let us begin with setting an example of justice and moderation to our subjects: let us proportion our demands to *our* necessities, not to *their* utmost abilities. A mild and equitable Government will gradually extend and communicate the principles on which itself acts to the ranks and powers subordinate to it. Tyranny creates tyranny, and is obliged to support it.

Upon the whole, I cannot be more clearly satisfied in my opinion, than that the Governor General's plan tends to load him with an enormous detail of business, which it is impossible for him to accomplish; that the proposed accounts cannot be procured without dispersing a multitude of indigent and rapacious black officers through the country; that if attainable, they could not be depended upon; and that if they were ever so accurate, they ought not to be the grounds of the ensuing settlement. (*Pages 437—441.*)

Minute by Mr. Barwell.

I assent to the Governor General's minute. A compilation and digest of materials, whereon to form a new and permanent settlement of the provinces, must be useful, and is in my opinion, unavoidable. The last leases have furnished the means which will give an insight into the real value of the lands; but these means are not yet in our possession and may still leave something for completer discovery, and for the guidance of a decision on which the prosperity of an extensive kingdom for a considerable period is probably suspended. No researches can be too minute, no informations too voluminous. I see my own, and I see the situation of every Member of Council to be equally delicate on this important affair: an affair liable to be viewed in various and even opposite lights, and to be canvassed in every step of its progress. The grand object in which all our sentiments unite, and to the necessity of which we all subscribe, is a solid establishment of the revenues upon an abated taxation. But it is not my opinion, in support of Mr. Francis or of any other member of administration, that will impress a conviction of this necessity upon the minds of those whose distant situations debar them from all possibility of personal observation.

My own sentiments, it is true, are clearly for a reduction of the revenue as absolutely requisite for the future welfare of this country; and while I heartily coincide with Mr. Francis in most of his general ideas upon this subject, so far as they clash not with the peculiar customs of Bengal, I think they may well be reconciled to the investigations proposed by the Honourable Governor, and that our judgment in so interesting a business should be formed upon the best principles of accuracy.

To set this matter in the clearest point of view, let us consider it from the Governor's proposition for the institution of a temporary office. A new settlement of the provinces will be necessary upon the expiration of the present leases. We are unanimously agreed, that a fixed valuation should take place in the revenues, and that some diminution should be made in the present rents; lastly, we propose that this important settlement should be permanent. On such a step we should surely endeavour to convince the Company, whose agents we are, and whose prosperity is blended with that of this country, that we have not negligently slumbered over their interests, or omitted any possible mode of ascertaining the true and ultimate value of their possessions. Nor is this all: we would convince them decisively, that no future administration may have the smallest opening to hint that deeper researches might have produced a more equal and equitable system for the natives, and a more advantageous bargain for our employers. Another good effect, to which we should turn our thoughts, is that of rendering the bulk of the people well affected to Government, an attempt which can never succeed, but in their steady reliance on its impartiality. And with all deference to the high authorities quoted by Mr. Francis, and in concurrence with them, I will venture to affirm that an equitable taxation is the great desideratum, and should be the first object of a good Government, and that such an attention to the welfare of the peasant and the manufacturer, is the ground-work of a well-regulated State.

The first improvements of the revenues, and relief of the laborious part of the kingdom in France, were projected by the great Duke of Sully upon the same principles, and brought to effect by an application of the very same means as those now proposed by the Governor General. He commenced with a most extensive and arduous collection of minute details in that branch; and from mature consideration of those detached voluminous materials, detected every species of artifice and fraud committed by the farmers, and employed the result of his discoveries towards lightening the burden upon the shoulders of the commonalty.

We now wish to shake off all rival adventurers, and instead of farming to fix the rates of lands with the several old zemindars, wherever it can be done with a probability of success This mode of settlement, though it has certainly many advantages, is yet liable, under certain circumstances, to very strong objections, some arising from the zemindar himself, such as his minority or total incapacity for business, and some from the nature of the lands. Besides, as the present proposed system must preclude all competition of candidates for the same lands, by granting them to their hereditary proprietors, it necessarily opens a large field for indulgence and partiality, to which the former mode of settlement precluded all access, by allowing the indiscriminate tender of proposals, for which reason it is clearly my opinion, that our employers will but faintly co-operate with our measures, or ratify our decisions, if we appear to have hastily employed the informations gained from the temporary engagements, which they may possibly think imperfect, as materials for our own more lasting establishment, especially while we had in our hands the means of procuring more accurate knowledge, and while we were timely warned by the first member of the State to exert them.

Therefore, when we propose a more impartial, and at the same time a reduced taxation, the least we can do is surely to give the Company satisfactory reasons for this drawback upon their income, and sufficient evidence that the impoverished state of the country loudly pleaded

for such an abatement. A proposition of this nature does not carry self-evident conviction upon the face of it, but must be supported by argument, confirmed by experience and established upon proofs, by which the present excess of the taxation may be made to serve as a reason, and as the authority for our admission of a decrease. The most probable method of acquitting ourselves by these proofs is offered to us by the Governor General, in the proposal of gaining the most accurate possible account of the payments actually made by the husbandmen, exclusive of its being essential to the relief which it may be necessary to give them, before Government can venture to expect any adequate advantage from fixing the revenue. Add to this, that there seems but small occasion for doubting the authenticity of the materials to be procured. Collateral informations will always serve as a check upon each other, while every man is actuated by a separate and peculiar motive, or so long as there remains a divided opinion in the world.

I am likewise persuaded, that Administration cannot have a more important topic of discussion, or object of action, than to define and secure the rights of the people; and in this country, where all territorial property centres ultimately in Government, and where the zemindar holds his own lands, but by a pottah, the same tenure by which his under-tenants hold them again from him, I think the public eye should have a watch upon those as well as the former, and that it would tend as much to the interest of the State as to the satisfaction of the greater number of inhabitants, that all pottahs should be equally well defined, and be guaranteed from all violation with an equal authority.

Personal property ought as much to be sacred in the pittance of the poor as in the possessions of the rich: and, as I have said, "the welfare of the husbandmen and manufacturer is the ground-work of a well-regulated State," it follows that I deem it to be the first object of this Government to fence and secure the ryots against arbitrary power of their zemindars; otherwise no one regulation we may resolve on can, in its immediat or remote consequences, answer the beneficent design for which it was formed. The wealth of every country is to be found in the wealth of the commonalty alone, especially in this country, where the peculiar manners and superstitions of the l' her class either influence them to secrete their acquisitions, to dissipate them in religious endowments out of the provinces, or in the ostentatious folly of giving daily food and subsistence to a number of idle dependents, who by such means are totally separated from the bulk of the people, and who must otherwise have been usefully employed in the manufactures and cultivation of the country. I acknowledge the task is extremely difficult and arduous; but unless the rights of the common people are well defined and well secured, I am persuaded all our speculations will only tend to enrich the zemindars, and either lock up in their hands a large portion of the current specie, or divert it to the most pernicious purposes, and precipitate that very decay we are endeavouring to guard against. (*Pages 442 to 444.*)

Minute by General Clavering.

I have perused with attention the Governor General's minute of 1st instant, and confess myself at a loss for words to express my astonishment at such an attempt to wrest out of the hands of the Council so important a branch of the administration of this country, as the ordering, management, and government of all the territorial acquisitions of the kingdom of Bengal, &c., vested in them by the late Act of Parliament, of which I hold it a direct breach, being a most illegal usurpation of the powers conferred by that Act upon the united Members of this Government, and as such I most solemnly protest against it.

If, to elude this protest, it should be stated that the object of the measure protested against is only to collect materials for future management, and not to usurp the ordering or management itself, let me ask: Why, at this time, when it is notorious that the Government of this country is in fact vested in the Governor General and Mr. Barwell exclusively, though nominally and descriptively in the Governor General and Council, that the Governor General should propose to have all orders written in his own name, and the control committed to his immediate charge? Again, will not the orders to be issued by the Governor General throughout the provinces suspend the action of all the other orders given by the Governor General and Council, or their delegates, the provincial Councils, by virtue of the independent powers now required to be given to him? And will not the existence of such authority, unlimited both in duration and extent, deprive the other members of Administration of the power of taking any further steps in the ordering and management of the revenues, for the purpose of forming the new settlement, although legally indivisibly conferred upon the united body of the whole Council? And then, will not this suspension, in effect, amount to an usurpation of a separate management or sole control, which I protest against?

Independent of this, the plan of establishing an office under the immediate and sole control of the Governor, in order to be furnished with accurate statements of the real value of

the land; or, in other words, once more to investigate them, for the probable purpose of forming a new settlement at the presidency, to be executed by such powers, and entrusted in the hands of such agents as will be employed, appears to me incompatible with the rules of the former administration of the revenue, with the constitution of the offices already established under the presidency, and indeed with every political principle that should regulate a wise Government; in short, solely tending to disturb the minds of the people, and to throw the whole system of the administration of the revenue into confusion. All the mischiefs of the Committee of Circuit will be renewed, by the unjustifiable hopes it will hold out of acquiring wealth by obtaining farms distributed under the influence of this newly-created office. The country will flock to the presidency, and Europeans and natives will all crowd the Governor's levees, in expectation of sharing a part of the plunder.

It is difficult to guess by whom a project, so big with mischiefs, could be devised. I am told the natives, however, ascribe it to Cantoo Baboo, the Governor's banyan. He had been absent for more than a year from the presidency; he was no sooner returned than the plan made its appearance. It is true, he is more interested than anybody in concealing the actual collection of his farms, and in secreting the value of his talooks, which he holds as an inheritance.

Whether or not I have ascribed the project to its proper owner, and have accounted rightly for his intention in it, it is most certain that it will be carried on and managed under his immediate influence, and that he will have the appointment of all the native officers under it.

The first obvious measures of the new office must be to establish their own power, and that of their agents, throughout the provinces: and with what moderation they will exercise that power, countenanced and supported as they will be, I leave Mr. Hastings' knowledge of the character of the people to determine. He can well judge whether they are likely to be disinterested in taking the mofussil accounts, and not shewing favour where they are most rewarded. He can determine whether they are not likely to disturb the present collections; and whether, in that case, the failure of the present year's revenue is to be imputed to the measures of the late majority, or to the appearance of so many rapacious agents in the districts. I think it cannot be doubted, but that when it is so much the interest of the ryot to conceal his property, it is not likely he will withhold a tribute to the agent to secure himself against a perpetual taxation.

The Governor General must know the necessity there is of holding the poona in April for the new settlement, and, for that purpose, that at least two months' previous notice ought to be given of the intentions of Government in forming it; and he ought, therefore, to be aware of the shortness of the time, and how improbable it is that these agents, even supposing they were not to be diverted from the object of their mission by the honour and lucre of their employ, would be able to go through an accurate investigation of the accounts of each village in such a short period.

Upon a supposition, however, that they had overrun the country and collected together the accounts, such as they may be supposed to be under such management, then there still remains the inconvenience of concentring in the Governor General all the information which may be obtained by their inquiries.

If the Eagle packet, which the Company acquainted us would sail in June last, should arrive and bring out orders that should obstruct the Governor General in the pursuit of his plan, just at the time when it may be ripe for execution, the Council, unacquainted with the whole plan, will neither be able to complete it nor to adopt any other.

Next, as to the expense; if that can be allowed to be a consideration when so great a benefit is in contemplation. The small part of it already fixed amounts to 5,000 rupees per month, and for the rest, the Governor himself does not even venture to throw a guess at what it may amount to, but this he deems immaterial, as he readily obviates the difficulty by the old plan of levying it upon the country by a mahtook, which he concludes it will be able to bear, forgetting how far the remissions he has lately found necessary to make of the whole amount balances of the Kisnagur Raja and others will support that opinion. But not to discuss a point so evident, let me ask, whether any payment from the country, instead of the treasury, can be a saving to the Company, one being supplied from the other, and both equally their property? But arguments upon savings are vain, when the necessity of an expense is so urgent as in the present instance. Having no establishment of local agents already in pay and authority, from whose long residence and experience we can expect the required information, it follows that new powers and new expenses must be framed to effect it. And had the Committee of Circuit (whose regulations the Court of Directors have enjoined us to consider as standing orders) not appointed a Roy-Royan, a Superintendent of the Khalsa, and an Accountant General, for the purpose of digesting and reporting upon all mofussil statements and accounts

the Governor General might have urged that the Board being inadequate to the labour of digesting them a new office was necessary.

I will only add that by the present plan, all former arguments of the late majority against the Committee of Circuit stand not only confirmed, but redoubled, by this self-condemnation. What the penetrating eye of the most experienced and oldest servants (all Members of the Council, with the Governor at their head) themselves upon the spot, with the whole power of Government in their hand, could not attain a true insight of, and this since corrected and discussed by five years' collections, is yet to be sought for, and now to be expected at the distance of some hundred miles, by two junior servants, one of whom is barely out of his writership, above one year of which he was absent from the country.

If a new investigation is now necessary, I can see no point of it that cannot be as effectually compassed, and even much more so, by the provincial councils; a natural unalarming channel, without expense and without any unnatural medium or unconstitutional authority; whereas the new plan is directly the contrary, and will possibly be totally thwarted (at least in the attainment of any good) in the very first outset, by the universal alarm so eccentric a motion will create and must continue to cause.

Mr. Francis has more fully answered the particulars; wherein chiefly coinciding, I forbear repetitions, excepting to the circumstance of the pottahs, upon which I will only say, that if they have not yet been issued, although ordered five years past, the Governor General must look to himself for the blame; for had he exerted his authority when the Committee was upon the respective spots, or had he not, by himself and the influence of his executive powers and the counteractions of his dependents, thwarted our attempts to effect it, they would not now remain to be discussed in a new plan; and considering the present constitution of the Government, I cannot, with Mr. Francis, flatter myself with hopes of success in the accomplishment of our late orders to Burdwan upon this subject.

In one point further I differ with Mr. Francis. My objections to this measure not depending on opinion, but being made directly to its illegality, I cannot strain my sense of duty to promise, as he does, that I will support it when it is resolved to be carried into execution.

In the appointment that the Governor General has made of officers to fill the new office, he has very particularly set forth the merits of Gunga Govind Singh, whom he had but a few days before restored to his office of Dewan to the Calcutta Committee, as if the office of right belonged to him. It must be remarked, however, that the Governor General has been very guarded, in not adding official probity in the encomiums which he has so liberally given to him. It is very well known that he was dismissed from his office on an accusation of Comaul-ul-Deen Cawn, whose testimony the Governor General cannot but admit; particularly as the fact has been established in the supreme court, on the trial of Mr. Fowke, that he, Gunga Govind Singh, had taken from him twenty-two thousand rupees collusively, for certain purposes, and for which he was to allow Comaul-ul-Deen to run a quantity of salt.

As the duties of the new office must necessarily engage the whole time of this minister it would have been reasonable, when the Governor General thought proper to appoint him Peschcar at the khalsa, with the salary of Rs. 700 a month, that he would have been pleased to have taken into consideration that it will be impossible for this same man to perform so many various duties, together with those belonging to his office of Dewan to the Calcutta Committee, which office will probably be totally neglected if some other man is not appointed to superintend it. (*Pages 444—446.*)

Second Minute by the Governor General (Warren Hastings) in reply to Mr. Francis.

I am thankful to Mr. Francis for the promise which he has given me of his assistance in promoting the arrangements which may be formed for the new settlement, even though they may not be such as he approves. After such an assurance, even his objections to the office, which I have recommended for that purpose, have a claim to my acknowledgments: and I hope to benefit by his assistance, more cheerfully given, when he shall discover that our objects are the same, and that though we do not agree in our opinion of the means which I have recommended, yet the difficulties which he apprehends in the execution of them are not only surmountable, but such as have always yielded to the same mode of investigation, constantly and successfully practised under the Mogul Government.

When I recommended the institution of an office for compiling the materials which were necessary for the new settlement, I meant no more than to shew the necessity of it, and to propose the ultimate objects of its researches. It was as foreign from my purpose, as it would have been premature, to mark out every stage of its progress, which, from the nature of it, must be subject to variations, or to determine either the precise mode or amount of the settlement, which it was the professed design of this investigation to ascertain.

For the satisfaction, however, which Mr. Francis requires, I will endeavour to give him a fuller explanation of the design of the office which I have recommended, and of the detail business which is to be or may be assigned to it.

I have already said, that the general design of it was to obtain an accurate state of the real value of the lands, as the only ground-work on which the new settlement could be constructed. I mean, on which it could be constructed, so that the burthen of the public revenue should rest with an equal weight upon the whole body of the people.

On this subject, Mr. Francis' minute contains two propositions: first, that the inconveniences of an unequal assessment ought not to be regarded; and next, that those inconveniences do not admit of a remedy.

More used to the practice of business than to speculation, I beg to be excused from discussing these propositions as general and abstract questions; and instead of considering them as principles which are equally applicable to any country, I wish to confine them merely to the revenue of Bengal.

The opinions of Montesquieu, Sir James Stuart, and Dr. Smith, which are produced to shew that an unequal assessment is attended with few or no inconveniences, may be just, as to those countries where the land-tax bears but a small proportion to the amount of the produce; and any attempt to alter the proportions of a land-tax which have been established by ancient custom, might, as they suppose, give rise to those discontents, which amongst a high-spirited people every innovation is apt to excite: but the case is different in Bengal.

Let us suppose, for instance, that in England the proportion of the rent of land taken by Government is a fifth part, and in some places, from an inequality in the assessment, amounts only to an eighth part. In the first case, the proprietor, after paying the tax, will have four-fifths, or sixteen shillings in the pound, and in the last, seventeen shillings and six pence, to himself. But in Bengal, nine-tenths of the net produce, or eighteen shillings in the pound, are generally supposed to belong to Government, and the remaining tenth to be the property of the landholder; or, in other words, a zemindar, whose land produces 1,00,000 rupees, pays 90,000 rupees to Government, and has a right to retain 10,000 rupees to himself: but should this land happen to be rated at 1,05,000 rupees, or only one-twentieth part above its value, then instead of 10,000 rupees the possessor would receive only 5,500 rupees, or little more than one half of his just income; while another man, who inherits a zemindary of equal value, but which is reputed to be worth only 95,000 rupees, or one-twentieth part under-rated, will, instead of 10,000 rupees, enjoy an income of 14,500 rupees. Thus the inaccuracy of a twentieth part of the valuation, more or less, will render the estate of one zemindar almost three times more profitable to him than that of another, whose lands are of equal value; and this operates not only as an inconvenience, but as a heavy oppression.

It is easy to shew, that the unequal valuations of lands in Bengal is productive of this evil, and that while some landholders, after paying their rents, retain enough to live in ease and affluence, others are reduced to beggary; and unless the mercy of Government interposes to save them, their estates are sold, to make good the portion of revenue which has been arbitrarily assessed upon them. The truth of this fact is established by the disposal which has been made of zemindarries in the division of Dacca, by the sale which was proposed of the Rajah of Nuddea's land, by the number of wealthy farmers who have been ruined in the Behar province, and by the sale of talooks lately made by the council at Moorshedabad.

Nor is any alteration in the assessment likely to produce discontents, because it will be no innovation. The ancient tumar and tuckseen, or distribution of the land-rent, which was formed about two hundred and twenty years ago, has long since ceased to serve as a rule. Under the old Government, this distribution was annually corrected by the accounts which the zemindars and other collectors of the revenue were bound to deliver into the office of the canongoes, or king's registers, of the increased or diminished rents of their lands and of the amount of their receipts: but the neglect of these institutions, the wars and revolutions which have since happened in Bengal, the inundations of rivers, the increase of cultivation in some parts of the province and the decrease in others, and the unequal depredations of the famine, have totally changed the face of the country, and rendered the tumar rent-roll a mere object of curiosity. The land-tax has, therefore, been collected, for these twenty years past, upon a conjectural valuation of the land, formed by the amount of the receipts of former years and the opinions of the officers of revenue; and the assessment has, accordingly, been altered almost every year.

Having thus shewn that the present assessment is unequal, that the inequality is productive of great evils, that it is fluctuating and annual, and that therefore any alteration in the distribution of it is not likely to occasion discontents, I hope that Mr. Francis will see, with

me, the expediency, and even necessity, of obtaining an accurate state of the value of the lands, to enable us to lay the public revenue with an equal weight throughout the whole province. Considerations of the same kind, though not so weighty as those I have mentioned, induced the most free people in the world to adopt a similar measure, and in the year 1692 all the lands in England were valued anew.

Mr. Francis' second proposition is, that the inconvenience of an unequal assessment is not capable of a remedy, because it is impossible to obtain an accurate valuation of the lands. I confess, the attempt is not unattended with difficulties; but as I have been led to propose it from a conviction of its necessity, I trust, if I am supported by the Board, to be able, in a great measure, to surmount them. I will not pretend to fix with precision the means by which this design is to be prosecuted. These must, in a great measure, arise out of the business in its progress; but by pointing out some of the principal sources from which I expect to derive materials, I hope to shew that the present juncture is peculiarly favourable to the attempt, and that the work is not undertaken without a fair prospect of success.

An accurate valuation of the lands is to be made, either by an actual survey and measurement, or from the accounts of the land-rents. The first mode is too tedious, expensive, and uncertain, to be adopted. I would propose to make a trial of the second. The accounts of revenue in Bengal are kept with a regularity and precision unknown in Europe. They are drawn out, I understand, nearly on one uniform plan, and are balanced and adjusted at fixed periods. A separate account current (or kurca) is kept for every ryot or tenant, in which the different articles which compose his rent for one year are stated on the one side, and the payments which he makes are entered on the other. The whole of these accounts are afterwards annually digested into abstracts, which contain a particular state of the rent, the receipt, and arrears of each village. The abstract of all the villages from the pergunnah accounts and the general state of the rent of the zemindarry or capital division, is composed of the aggregate of the accounts of the pergunnahs. In order to convey an idea of the distinct and circumstantial manner in which these accounts are kept, I have annexed translations of the two first, *viz.*, that of a single ryot, and that of a village: it will be unnecessary to produce specimens of the two last. All these are called mofussil accounts.

The history which I have given of these accounts will serve, I hope, to redeem their character from the imputation of being loose, confused, and intricate, and shew that, if we can succeed in procuring them, they will furnish us with ready-formed abstracts of the actual collections, which will require only to be compared. For this purpose, it will not be necessary to examine the accounts of every ryot nor of every village. The inferior accounts are useful only as checks to the greater. From the regular process in which the whole are formed, it will be seen how easily the falsehood of any account may be detected, since it is impossible to falsify the sum total of a pergunnah without falsifying all parts of it, which of course will differ from those of each village; and those again, if forged, will be corrected by the accounts-current of the ryots. Thus the fidelity of the greater accounts, when suspected, may be easily tried by a reference to the subsidiary accounts, which can hardly be falsified, as it is almost impossible to join in one combination so many people as must be concerned in it.

All these different accounts are publicly kept in their respective cutcherries. It is by them that the rents are collected, and they are always delivered over to such persons as have the charge of collecting them, whether zemindar, sezawal, wadadar, or farmer. I am sensible, that to obtain the original accounts of the rents of every part of Bengal will be a very difficult task, for the inferior zemindars will, as Mr. Francis has observed, probably use every artifice to conceal the accounts of their rents, or perhaps even attempt to fabricate them. But this in the large divisions, for the reasons which I have already given, will be almost impossible; besides, as the farmers are bound by their original engagements to deliver to Government an account of their collections, as the custom of the country requires that they should give up the mofussil accounts at the expiration of their lease, and as they have little interest to withhold them, since they must yield up the farms at the end of the year, the present juncture is more favourable for procuring a true valuation or hustabood of Bengal than any other. It would be almost impossible to form it afterwards, in the event of the land being restored to the zemindars; and thus one of the great objects of the five years' settlement—the discovery of a rule for an equal assessment—would be lost.

To collect these different accounts, and to digest and methodize them for our guidance in forming a new settlement, is one of the principal objects of the temporary office which I have proposed.

I am sensible that it would be a far more easy task to prepare the materials for a new settlement in the manner Mr. Francis proposed, by taking the accounts of the actual receipts of rent for three years past, and correcting them by the opinions of the provincial councils, on

such districts as have been either favoured or over-rated. But although I consider these as useful information, I do not think that we can by them alone ascertain the real value of the lands, or safely make them the only grounds of the future settlement of the revenue. Many of the lands have suffered by drought, inundations, or other temporary calamities, which, though affecting the immediate collections, cause no diminution in their real value. In some instances, the rents have been completed by loans, or made up from the private fortunes of the landholders; in other places, they have been enabled to fulfil their engagements by oppressive exactions. The value of some lands, on the contrary, have been fully equal, or even superior, to the rent assessed upon them; but the collections have fallen short, through the neglect or incapacity of the farmer or zemindar, or have been received and dissipated in idle expenses, or been embezzled by the collectors. In each of these cases (and every district in the province, without an exception, is liable to one or other of them) the actual receipts of Government would prove a false estimate of their worth, and often widely remote from it; and if a settlement were formed upon such a principle, what would it be, but to hold out a reward to fraud and dissipation, to encourage the zemindars and landlords to keep back their payments as the means of diminishing their rents, and to furnish punctuality by loading it with a full share of the assessment?

But to correct the irregularities of an estimate constructed upon such uncertain grounds, the opinions of the provincial councils are thought sufficient. Now these must be formed either on materials such as I have described, or on the opinions of their dependent officers. The former would be useful, and spare the labour of further researches; the latter, if the evidence of accounts can be procured, ought not to be admitted as authority in a matter of such great importance, and in which an error in the valuation of the land, even of a twentieth part, may reduce an ancient family to beggary, or double the income which it formerly enjoyed. Surely it will not be urged as an objection to official accounts, that they may be fraudulent and yet propose to take private opinion for authority. The forger of false accounts is liable to the severest penalties, and those accounts are liable to detection; but the errors of opinion are always difficult of conviction, nor has any Government ever devised a punishment for those who maintained them.

To elucidate and support many of the arguments which I have above used, I will only state one case:

At the close of the last Bengal year, several talookdars, or petty landholders, in the neighbourhood of Moorshedabad, fell largely in arrears in the payment of their rents, and their lands were sold to make good the deficiency. Some of these families had enjoyed their estates for above an hundred years. The Board, knowing that the revenue is unequally assessed, and in some places beyond the abilities of the proprietors, wrote to the provincial council at Moorshedabad to know whether the estates of these talookdars had been really over-rated, or whether the arrears were to be attributed to neglect or mismanagement. They have lately returned an answer, with accounts of the rents, receipts, and arrears of all these different talooks, by which it appears that the rents had in general been paid with much regularity for the three preceding years, but had fallen in balance during the last. One of the talookdars (Shazadpore), whose annual rent is about 15,000 rupees, had last year paid no more than 4,000 rupees in part of it. The following is an extract of the answer to our enquiries as to the causes which had thrown these talooks into arrears:—

"How far these balances have been owing to the neglect and mismanagement of the proprietors, or to the lands having been over-rated, it is not in our power accurately to determine; but from the collections having been regularly kept up for three years, and falling so much in arrear the fourth, it affords room for supposing that the complaints of the zemindars of the drought of the season were not without foundation, and this might be the cause of that year's deficiency."

It appears, therefore, that the regular payment of rents for three years is no proof of the proprietor's ability to continue to pay the same rent; that if he falls in arrear, his estate is sold; and that a provincial council, of which both the English members and native officers, in point of abilities, yield to none in Bengal, are unable to say whether any particular district has been favoured or over-rated; for, if it is not in their power to give an opinion of the under or over-valuation of the rents of an estate in their own neighbourhood, which had been sold, and the rent of which amounts only to 15,000 rupees, how can we expect exact reports concerning the rents of the whole of their division, which amounts to fifty lakhs of rupees? The truth is, that it is impossible to form a just judgment of the value of lands, and consequently of the revenue which they should pay, but by an inspection of their mofussil accounts.

But admitting that the receipts of revenue and the opinions of the provincial councils should appear to us satisfactory grounds for establishing a fixed assessment, yet the concurrence of the zemindars also will be necessary. Suppose the case of the talook above-mentioned,

Shazadpore. We offer to fix the rent at 15,000 rupees, the possessor declares it to be over-rated. Upon what grounds can we compel him to subscribe to our conjectural valuation, or how can we admit his pleas without examining them? Should we, however, persist in dictating our own terms, the proprietor will very probably accede to them, like the Raja of Nuddea, in the dread of losing his talook, which if unequal to the assessment, must afterwards be sold, not for any crime or fault of the proprietor, but for the despotism of Government in exacting from him what he had not to give.

If the commands and exigencies of the Company will admit of it, I shall be ready to join in lowering the revenue. But the peculiar necessities of this Government will not perhaps allow of a considerable diminution of the rents; and whatever it may be, it will be felt as a relief only according to the distribution of it, and the manner in which it is proportioned to the state and abilities of those who are to pay it.

I concur entirely with Mr. Francis in his arguments against raising the greatest possible revenue from Bengal, by destroying all the intermediate orders of men between the ruler and the cultivator. But as my object, in endeavouring to procure an accurate account of the rents, is only to make an equal distribution, and has no kind of connection with the proposition of raising the largest revenue, nor with that of destroying the intermediate orders of men, I imagine it is unnecessary to follow Mr. Francis through all the abstract reasonings which he has introduced on subjects so remote from my own intentions.

Besides the intermediate business of the proposed office, I have recommended, as a second object of its researches, the better and more effectual regulation of pottahs for the security of the ryots in the perpetual and undisturbed possession of their lands, and to guard them against arbitrary taxations. The words "perpetual possession" and "their land," which may be mere inaccuracies of expression, for they were not meant to convey the idea of any positive or exclusive right of possession, have been noticed by Mr. Francis as contradictory to the rights of property which are vested in the zemindar. I shall not here attempt to account for the distinctions of property as they are understood in this country: it is sufficient for me to observe, that while the ryot pays his rent, the zemindar has no right to dispossess him; nor can the zemindar, by any legal right, exact a higher rent from him than his pottah prescribes.

Mr. Francis seems to suppose, that there is no necessity for the interposition of Government between the zemindar and the ryot. He observes, "that if they are left to themselves, they will soon come to an agreement, in which each party will find his advantage." This would be a just conclusion, if the zemindars were all capable of distinguishing what was for their advantage: but it is a fact, which will with difficulty obtain credit in England, though the notoriety will justify me in asserting it here, that much the greatest part of the zemindars, both of Bengal and Behar, are incapable of judging or acting for themselves, being either minors, or men of weak understanding, or absolute idiots. This circumstance, and the consequent oppressions which are exercised by those who act for them without interest in the prosperity of the zemindarry, renders it necessary to provide for the security of the ryots by checks and regulations. It is to be observed, also, that there are two kinds of ryots. The more valuable are those who reside in one fixed spot, where they have built themselves substantial houses or derived them by inheritance from their fathers. These men will suffer much before they abandon their habitations, and therefore they are made to suffer much; but when once forced to quit them, they become vagrant ryots. The vagrant ryots (as Mr. Francis observes) have it in their power, in some measure, to make their own terms with the zemindars. They take land at an under-rent, hold it for one season; the zemindar then increases their rent, or exacts more from them than their agreement, and the ryots either desert, or if they continue, they hold their land at a rent lower than the established rate of the country. Thus the ancient and industrious tenants are obliged to submit to undue exactions, while the vagrant ryots enjoy lands at half price, which operates as an encouragement to desertion and to the depopulation of the country.

The general subject of pottahs, and the abuses and oppressions arising from their present uncertainty and the variety of articles that compose the ryots' accounts, have been often matter of just complaint; and I believe every member of the Board is satisfied that they require to be reformed. All that I now propose is to collect the materials of information on this subject, to be laid before the Board for their future determination, on the most effectual means of regulating the pottahs. At present, I am not prepared to propose a complete plan, and decline giving a premature and partial opinion, while I am professedly seeking for the grounds to determine it. (*Pages 447—452.*)

III—Harington's Analysis of the Bengal Laws and Regulations, Volume III.

Mr. Shore's Minute on the rights of zamindars and talookdars, recorded on the Proceedings of Government in the Revenue Department, 2nd April, 1788.

The Court of Directors, in their general letter by the *Swallow*, directed this Government to ascertain, as correctly as the nature of the subject would admit, the real jurisdictions, rights, and privileges of zemindars, talookdars, and jagheerdars, under the constitution and customs of the Mahomedan or Hindoo Government; and what were the tributes, rents, and services which they were bound to render, or perform, to the sovereign power; and, in like manner, those from the talookdars to their immediate liege lords the zemindars; and by what rule or standard they were, or ought severally to be, regulated. Previous to my return to this country, in 1786, the Board of Revenue had been called upon for their opinion on the rights of the zemindars, and had declared a zemindary to be a *conditional office, annually renewable, and revocable on defalcation;* and had applied to the Supreme Council for their decision upon this opinion, as essential for their guidance, in the recovery of arrears of rent; and for making the ensuing settlement of the revenues. Mr. Grant, who has employed much labour and ingenuity in researches into the finances of Hindoostan, has also combatted the prevailing idea, that the zemindars are proprietors of the land; and in opposition to it has maintained that *the sovereign ruler, throughout Hindoostan, is the sole virtual proprietor of the soil, in right and fact the real acting landlord.* These opinions stand in contradiction to others of high authority, and are too important to be lightly admitted, or hastily rejected. They affect the rights and interests, both of this Government and its subjects; and this consideration alone would induce me to discuss them, if the orders of my superiors did not prescribe it. (*Pages 228 & 229.*)

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Though it might be of some utility to investigate the principles of the Government of the Patans, yet it is rather from the reign of Akber, which began in the year 1556,* and ended in 1605, that we should commence our enquiries into the administration of the Mahomedan Princes. The history of the greatest part of his reign was written by his minister Abulfuzl; who compiled a voluminous code of the ordinances and regulations established by Akber, with respect to finance. The principle seems to have been formed on the practice described in the institutes of Timour, which was *to divide the produce of the land, in certain proportions, between the sovereign and the husbandman.*† That such indeed was the ancient constitution of the empire, although the principle might be occasionally modified in practice, appears highly probable. All the rules of Moghul finance seem formed upon this principle; and the ordinances of the Emperors, for increasing the cultivation, and improving the quality of the produce, with a view to the augmentation of the public revenues, the appointment of inferior offi-

* AKBER succeeded to the throne of Delhi on the 2nd Rubee-oo-Sanee, A.H 963, or the 14th February, A.D. 1556.

† See *regulations concerning the collection of the revenue*, in Major DAVY's and Professor WHITE's translation of the *Institutes of* TIMOUR. The following extract is subjoined, for the convenience of those who have not immediate access to that work:—"I ordained that the revenues and the taxes should be collected in such a manner as might not be productive of ruin to the subject, or of depopulation to the country. I ordained that, in every country that should be subdued (to the inhabitants of which charters of safety and security should be granted), the produce and the revenue of that country should be inspected. If the subjects were satisfied with the old and established taxes, that those taxes should be confirmed, agreeably to the wishes of the subjects; or if not, that they should be determined according to the regulation. And I ordained, that the duties should be determined in proportion to the produce of the cultivated lands and that the taxes on the produce of those lands should be affixed and ascertained. Thus first, that the cultivated grounds of the subject, which should be made fertile by the water of canals, or by springs, or rivulets, or rivers (if those waters flowed perpetually and continually) should be superintended by the officers of the crown; and that of the amount of the produce of those grounds two-thirds should be allowed to the possessor thereof, and one third be paid into the royal treasury. If the subject should consent to pay the tax for the restricted lands in specie, that for the grain, due to the treasury, the sum should be fixed on the subject according to the current price of the grain; and that, corresponding to the current price of the grain, the money should be paid to the soldiers. If the subject should not be satisfied with this mode of collection, and with the partition of the general produce into three parts, that the restricted lands should be divided into first and second, and third *Jurreeb;* that the produce of the first *Jurreeb* should be estimated at three loads, and the produce of the second *Jurreeb* at two loads, and the produce of the third *Jurreeb* at one load, and half thereof should be estimated as wheat, and half thereof as barley; and that of the total amount one-half of the produce should be collected. If the subject, notwithstanding this, should be unwilling to pay the tax in kind, that the value of a load or wheat should be fixed at five *Miskauls* of silver; and the value of a load of barley at two and a half *Miskauls* of silver; and that the duty of the *Killaab* should be exacted over and above; but that nought else should be demanded of the subject under any pretext or denomination whatever. That the rest of the lands of the husbandman, those which produced in the autumn, and in the spring, and in the summer, and in the winter, and the lands which depended on the rain for fertility, should be divided into *Jurreebs;* and that of the produce of those which were numbered, a third, or a fourth, should be collected. That the duties on the herbs, and on the fruits, and on all the other productions of the country, and on the reservoirs of water, and on the commons, and on the pasture lands, should be fixed and determined according to the ancient and established practices; and if the subject should not be content therewith, that the collections should be settled according to the *Hustabood.* And ordained, whoever undertook the cultivation of waste lands, or built an aqueduct, or made a canal, or planted a grove, or restored to culture a deserted district, that in the first year nothing should be taken from him; and that in the second year whatever the subject voluntarily offered should be received; and that in the third year the duties should be collected according to the regulation."

cers for keeping constant accounts of the land and its productions, the annual transmission of those accounts to Delhi, the regulations for dividing the crops, and measurement of the land, as well as the *hustabood* investigations of later times, must be referred to this origin. Indeed, the common expression of the people, that "the land belongs to the zemindar, and the rent to the King," which from its universality is proverbial, affords a proof of it.* Toorenmul was the person commissioned by Akber to arrange the revenue of his empire; and his transactions in Bengal, where he resided two years, from what I can learn, were regulated by this principle. He collected the accounts of the canoongoes—and in some places ascertained their accuracy, by local enquiries, and by measuring the land. From these materials he compiled the *Tukseem*; or account exhibiting the constituent portions of the rent of each village, district, and principality: and the aggregate formed the *Toomar*, or rent-roll, of the soobah. At what proportion of the gross revenue he estimated the sovereign's share I know not. One account in my possession, of unknown authority, states that he regulated it, according to the situation of the land and quality of the soil, by the labour and expense attending the cultivation of it, in different degrees of proportion, from one-half to an eighth of the estimated gross revenue. This account is at least probable. But he left with the zemindars the management of their lands, and concluded a settlement of the revenue with them, assigning to them a portion of the land, or its produce, for their immediate use and subsistence, under the denomination of *Nankar*.†

The principle of this operation does not, in my opinion, destroy the right of property in the soil, although it greatly reduces the interest of the proprietors in it; for, supposing the zemindar bound to collect the rents by the same rules of proportion on which his own rental was estimated, he could legally derive no emoluments beyond the subsistence allowed him. In that case, he could only benefit from those hidden sources, which the officers of Government were unable to explore; from improved cultivation, which remained undiscoverd; or from the fears or liberality of the peasantry. These, in fact, were resources which the severest administrations have never been able to appropriate entirely; and hence the zemindary tenure, under the application of a principle of finance, which apparently rendered it of little worth to the possessor, became valuable. It was transmitted by inheritance; and the ryots looked up to their zemindars as their hereditary patrons and governors and as proprietors of the land within their jurisdiction; and these were certainly very important privileges. The natural consequences of such a system are obvious: frequent investigations of the land, and its produce; occasional remission on the rent-roll; and concealment on the part of the zemindars. Under an ignorant, or weak administration, a decline in the revenue was unavoidable. An active, able, and well-informed Nazim would attempt the recovery of the defalcation. His avarice, or his exigencies, will equally dictate the application of the fundamental principle for his own emolument or that of his sovereign. In the commencement of Akber's reign, and probably before it, the settlement was annually made; but motives of policy, humanity, and justice induced him to form it for a period of ten years; and in his time, we are by the *Ayeen Akbery* informed the zemindars of Bengal were numerous, rich and powerful.‡

The settlement of Bengal by Toorenmul was completed about the year 1582; and appears to have subsisted, with little variation, for a period of about seventy-six years, until the year 1658, near the close of Sultan Sujah's viceroyalty. During this interval a very small proportion of the revenues of Bengal were remitted to Delhi. They were applied to the discharge of the public expenses of the province, for which they were fully adequate; and no general attempt appears to have been made to enhance the assessment of Toorenmul by new

Note added to the original minute.

* "This principle is clearly asserted both in the institutes of Timour and Akber. In the former, however, landed property is as certainly avowed, in opposition to the maxim that the sovereign, in the States of Asia, is the sole proprietor of the soil. The following extract proves this:—"Waste lands of which there is no owner, shall be brought into cultivation by the khalsa or exchequer; and if there should be an owner, and he be distressed, the due means of holding possession shall be furnished to him, that he may cultivate his own lands." The same conclusion is inferrible from other passages. With respect to Bengal, there is reason to believe that the principle was never literally and strictly applied in practice. No traces of it can now be found in any part of what constitutes the province of Bengal, except in Purnea; and although Toorenmul may have formed his settlement upon an estimated division of the produce, the crop was not actually portioned out between the sovereign and husbandman.

Second note added to the minute.

† "This account of Toorenmul's proceedings is collected from the best information which I can procure. I have only one written authority for it, and the name of the author is unknown. It is generally supposed that Toorenmul fixed the rent of each ryot, and that this rule is now known under the term of *Assul*, or original rate, in contradistinction to the taxes subsequently superadded. His residence in Bengal was too short for so extensive and laborious an operation; but he may have prescribed the rules at which the rents of the ryots should be fixed, and left the execution of them to others, or to the zemindars. Or we may suppose that he adopted an old existing rate, and this I deem probable.

‡ See account of *the ten-years' settlement* in Trans. of *Ay. Akb.*, Vol. 2, p. 365. See also History of the *Soobah of Bengal*, in Vol. 2.

inquisitions into the produce of the lands. The addition imposed by Sultan Sujah, the result perhaps of such an enquiry partially undertaken, was moderate. Jafeer Khan, who was appointed Dewan of Bengal by Aurungzeb, and afterwards Nazim by Furukseer, in 1713, prosecuted his enquiries into the finances of the country with a rigour before unknown. He deputed his own agents to scrutinize the value of the lands, and to raise the rents of them to the highest possible standard, by collecting for the Government all that the ryots or peasantry paid to the zemindars, to whom he left their established subsistence of *Nankar*.* He did not, however, annul their right of inheritance; and that he considered the zemindars to have a property in the soil a striking proof will be exhibited in the course of these remarks. From the death of Jafeer Khan to the present time, the claims of the zemindars to a property in the soil, and to succeed by inheritance, are supported by usage and fact. A minute history of this period would exhibit collusion and concealment on their parts, opposed to the vexatious impositions and demands of their rulers. It is the nature of an arbitrary govern-

Third note added to the minute.

* "It is generally supposed that variable imposts were first introduced under the authority of Jafeer Khan. He may have been the first Nazim who gave his avowed sanction to them; but they had, from whatever authority, taken place before his time, and probably soon after the settlement of Toorenmul. In proof of this the following account taken from the records of the canoongoes, is produced; and many others, if necessary, might also be brought forward.

Toomar Jumma, including the *Maljehat*, or revenues of the land, and *Sayer jehat*, or variable articles, of the pergunnah Akber Shahy, sircar Oulumber, Bengal year 1098, or A.D. 1691.

	Rs. A. G.		Rs. A. G.	Rs A. G.
Monzahs or Villages	135 5 10			
Mehals	15 0 0			
	150 5 10			
Jumma or Assessment				15,507 8 9
Hubboobat, or taxes, *viz.*:—	Rs. A. G.		Rs. A. G.	
Dameo per cent.	2 8 0		414 6 2	
Fotahdaree	1 9 0		258 15 11	
Deedaree	1 4 0		207 2 15	
Per cent.	5 5 0		880 8 8	
Tukkee, per cent.	1 0 0	165 11 14		
Behai kughuz (price of paper)	0 1 12	16 9 2		
	1 1 12		182 4 16	1,062 13 4
			TOTAL	16,570 5 13
Ferah, or additional taxes, calculated on the above total:—				
Kussoor, per cent.	15 0 0	2,485 10 5		
Fotahdaree	0 8 0	97 4 17		
Howah	1 9 0	304 1 5		
	17 1 0		2,887 0 7	
Mehmany			48 10 0	
Total Hubboob or taxes				3,998 13 11
Total jama				19,506 6 0

The taxes, by this account, are near 27 per cent. on the assul or original rate; and the additional imposts are calculated on the consolidated total of the assul and first article of taxation. But long before the date of this account additional taxes upon the Toomar Jumma of Toorenmul had taken place. In an account called a *Dutsoor ul Amul*, or rule of practice, kept by the canoongoes for the Bengal year 1072, or A.D. 1665, the following imposts are particularized:—

	Rs. As. G. C.
Neej Kussoon, per 100 Rs.	4 14 10 2
Fotahdaree	1 9 8 0
Howah	2 4 16 1
Canoongoe's Tukkee	1 0 3 1
Price of paper	0 1 12 0
Total per cent.	9 14 10 0

During the vigour of the Mahomedan Government, the accounts of the mofussil canoongoes were annually transmitted to the Dewan of the province; and he must have known these variations from the settlement of Toorenmul. I am by no means convinced that even that settlement was not composed of an aggregate, including imposts on an original standard. If, however, it were not so, and the *assul* alone furnished the revenues of the province, these additional imposts must have supplied a revenue for the zemindars, and officers employed in the collections; and it is probable that there were others not inserted in the public records; and that the Government either did not know them, or what is more likely, connived at them."

ment to produce such effects; and where discretion becomes the measure of exaction, the concealment of property forms the only barrier against it. We ought not to forget that twenty-five years of this period have elapsed under the administration of the English, who adopted, and have constantly admitted, an opinion, that the zemindars are hereditary proprietors of the soil.

This position has lately been controverted, and has been declared unconstitutional and inconsistent with the terms of the *sunnud*, or grant, which has been pronounced the sole ground of rights, and privileges of zemindars. The arguments by which this objection is supported may be reduced to the following terms. That the constitution of the Moghul Empire, acting upon a principle of dividing the gross produce of the soil with the peasantry, annihilates the idea of a tenure conveying property in it, and devolving by inheritance; that the existence of the sunnud proves it essential for the investiture of a zemindar; that a zemindarry is expressly called a *service* in the sunnud, the terms of which, assign duties to be performed, but convey no property; that an acknowledgment was constantly paid to the sovereign previous to a zemindar's investiture; and lastly, that security for the personal appearance of the zemindar was demamded and taken previous to his investiture; which would have been an unnecessary precaution, if the lands were considered as his property. In answer to these arguments the following observations occur: That, although the avowed principle of the Moghul constitution limits the value of landed property, and makes it dependent on the equity and humanity of the sovereign, it is not incompatible with its existence, and goes no further than to establish the right of the State to a proportion of the rents of all land. That the inheritable quality of the zemindarry tenure is ascertained by the laws of usage and prescription, which in all countries are admitted as legal and indefeasible, where they are derived from any principle of natural right, or are conformable to right reason. That the zemindarry sunnuds were never conferred at discretion, or upon aliens, to the prejudice of the heir by kindred; and of course confirmed existing rights, but did not create them; and that in fact the principal zemindars only applied for sunnuds and received them. That the inferior landholders succeeded according to their own laws of inheritance by right, and of course without any sunnud. That the term *service* in the sunnud, can prove nothing to the prejudice of the zemindars, whilst it can be demonstrated that the tenure was hereditable. Property may depend upon services; or service, in the course of time, by usage, be converted into property and inheritance. That the acknowledgment paid by the incumbent on investiture, is rather a proof of this, than an argument against the right of the zemindars; and if it may not be deemed an exaction, ought to be in the light of a consideration for the renewal of an estate. That no such consideration was paid by a *Crorie*, or *Aumil*, who were both collectors of the public revenues, but did not succeed by inheritance; and this circumstance marks a strong distinction between the zemindarry tenure, and a common office. That in a country subject to frequent disturbances and revolutions, in which the zemindars as often took part against the established Government, as for it, the propriety, as well as necessity of a personal obligation, by which one subject became bound for the attendance and good behaviour of another, is obvious, without authorizing an inference to the prejudice of zemindarry property. The period assigned in the grant for the duration of the tenure is unlimited, and the true conclusion which this silence admits is, that the tenure is good as long as the conditions in the grant are observed. By the terms of the grant, a zemindar is entitled to an established provision, under the name of *Naukar*, included under the head of *Muzkooraut*, after completing his annual agreements for the revenue. There is no proportion between the amount of it and that of the pecuniary acknowledgment paid for his investiture. It was not sufficient for his subsistence; and it was still less a fund for the accumulation of property, nor can the permanent appropriation of the fund itself be reconciled to the idea of a fluctuating office.

In addition to the preceding observations, I shall add some conjectures on the zemindarry tenure, and its establishment, or confirmation, by sunnud or grant. In Akber's time, the zemindars of Bengal were numerous, rich, and powerful. They were not of his creation; and probably existed, with some possible variation in their rights and privileges, before the Mahomedan conquests in Hindoostan. From this circumstance, as well as other collateral considerations, there is reason to suppose that the new invaders, who claimed the revenues of the country, from motives of policy and humanity employed the ancient possessors of the land as their agents for the collection of the taxes of the State, superadding the jurisdiction exercised by the collectors of revenue in their own system of finance.* That for this pur-

Fourth note added to the minute.

* "The following is a list of the officers mentioned in the *Ayeen Akbery*, as employed in the government of the country and collection of the revenues:—

First.—The *Sepahsuller*, or Viceroy.

pose they confirmed the former proprietors, by sunnuds or grants, conferring services, or offices of an inheritable and permanent tenure. That hence the zemindars, if they did not originally possess, acquired, in the course of time, a property in the soil, and the rights annexed thereto, of disposing of it by sale, gift, and mortgage, subject however, under any mode of alienation, to the sovereign's claims for rent. And that for the purpose of securing the revenues from fraudulent or concealed alienation, as well as the increase arising from improvement, a numerous body of inferior officers was appointed to keep accounts of the land and its productions, as well as a record of such events as affected the revenues. That although the zemindars succeeded according to the common course of inheritance, agreeably to their own laws, some form, declaratory of the succession of the new incumbent, was necessary for the information of the officers of the State, and ryots, as well as for the security of the new zemindar, whose name was, upon his accession, enrolled in the public registers. The principal zemindars who enjoyed extensive jurisdiction, and were admitted into the presence of their sovereign, or his viceroy, petitioned for and obtained sunnuds, not only as confirmations of their rights, but as an honourable distinction, and these they paid for, while the inferior zemindars were contented with a less formal and expensive acknowledgment of their rights.* Formerly the zemindars were bound to take care of the roads and bridges; and whilst the amount of their rents was permanent, and the profits arising from the lands left to them they had an interest in fulfilling the dictates of their duty. Latterly, these functions have been neglected; and the suspension may be dated from the inquisitorial researches of Jafeer Khan. The preservation of the internal peace of their districts, and the apprehension of thieves, murderers, and other violators of the laws, were amongst the assigned duties of the zemindars. They were also obliged to attend and assist their sovereign, for opposing invasion, and suppressing rebellion; but it was not unusual to grant them a remission in their rents equivalent to the expenses incurred by them in the discharge of these services. These functions may be reconciled to the dependent state of property under the feudal system, which in many instances appears conformable to that of property in Hindoostan. The expenses attending the performance of them could never be discharged from the allowances made to the zemindars under the general terms of *Muzcoorat*, but must have been supplied from other sources of emolument. With respect to the jurisdiction exercised by the zemindars, it was

Second.—The *Foujdar*, for keeping the peace and preserving the police of the country.
Third.—The *Mir Adul*, and *Cazy*, for the administration of justice.
Fourth.—The *Cutwal*, or head constable.
Fifth.—The *Amilguzar*, or Collector of the revenues. Under him are the *Karkoon*, *Mocuddums*, and *Putwarries*, accountants; all of whom are employed in keeping accounts of the produce of the soil. Also the *Tepukchy*, or accountant for the treasury; and the treasurer.
Sixth.—The *Canoongoes*, whose duty it was to keep minute accounts of the land, its produce, its revenues, the rates of assessment, variations in it, alienations and annexations of land; and in short of everything relating to the revenues, the land, and its produce. See translation of *Ayeen Akbery*, Vol. I, pages 358 to 387, for a description of the functions of the officers specified.

This list is incomplete. It is remarkable that the zemindars, who in Akber's time were numerous, rich, and powerful, and had so much concern in the revenues, are not mentioned in the list of officers. In the original *Ayeen Akbery* they are frequently called *Boomee*. This is either a Persian word implying *possessing the soil*, or earth; or a corruption of the Hinduvee term *Bhoomis*, or *Bhoomik*, which may be interpreted *Lord of the soil*, or earth. But whatever may be the origin of the word, *Bhoomee* and *Zemindar* are the same."

It may be added, on the subject of the above note, that in the passage of the *Ayeen Akbery* translated by Mr. Gladwin—"Whenever a zemindar, or a collector of the royal or jageer land, is disobedient" (Vol. I, page 372, Cal. Edition.),—the term *Ruzurgur* (a Persian word, denoting generally a landholder, or husbandman) is used, instead of *zemindar*, in two copies of the original, which have been examined; and that *Amilguzar* is the officer designated in the English version "Collector." J. H. H.

Fifth note added to the minute.

* "I have not been able to trace any account of the zemindary sunnud to the reign of Akber. The Board of Revenue have indeed quoted the form of a zemindarry sunnud as in use in Akber's reign, but the authority is doubtful. The *Ayeen Akbery* contains a chapter on grants, which does not include the zemindarry sunnud. Many other suppositions might be formed on the origin of these grants, if it were necessary; but as it is an indisputable fact that the zemindarry tenure is hereditary, I deem all enquiries into its origin more curious than useful. Amongst a variety of zemindarries, to which the present possessors have succeeded without any sunnud, the following may be quoted, which are all held in the names of the former proprietors deceased before the Company acquired the dewany:—

The two divisions of Mahomed Ameenpore held in the names of Mokond and Ramkishen.
The two divisions of Lushkerpore, held in the names of Nerendernarain and Modenarain.
Kankjole, held in the name of Abadulla.
Pergunah Muldewar, held in the name of Kishennarain.
Pergunah Chunderdeep, in the name of Oodenarain.
Hommabad, held in the names of Rehmut Ghasee and Manower Ghasee.
Edilpore, in the name of Rambullub.
Kismut Pergunah Hougla, in the name of Lutchmynarain.
Pergunah Atteah, in the names of Khoda Newaz, Nubbee Newaz, and Shah Newaz.
Pergunah Khergong, in the names of Deedul and Sham Sunder.
Pergunah Mehlind, in the name of Rajbullub.

very limited. I cannot trace any delegation of power for the trial of delinquents and the infliction of punishment upon them. If this was ever exercised, it must be either considered as an encroachment on the Royal prerogative, or to have existed by sufferance. For the enforcing the payment of the rents, they certainly, if practice be deemed authority, were allowed a power of coercion which has sometimes been exercised with a cruelty disgraceful to humanity.

The preceding explanation places the zemindars in a double point of view—as hereditary possessors of the soil and as the servants of the State. Whether the functions of the latter designation are inherent in the hereditary tenure or not appears to me immaterial. Long before the establishment of the Company's authority in India they were united, and were exercised by the agents of the Company, when they held the dependent proprietorships of two small talooks. But though the tenure was hereditary, it was nevertheless conditional; and a zemindar was liable to dispossession, either for a failure in the payments of his rents, or for delinquency. The rigour with which this penalty was enforced depended greatly on the discretion of the supreme authority. If the arrears of rent were occasioned by severe public calamity they were excused; if from a cause of temporary operation they were added to the settlement of the ensuing year. Sometimes a superintendent was appointed, or the lands were assigned for a period to the management of another, or perhaps the tenure was given to a new possessor. In the case of delinquency, the penalty was proportioned to the fault, of which the ruler was the judge. Rebellion, or avowed resistance to the orders of Government, was usually punished by a total dispossession. The perpetration of murders or robberies, or a proved connivance at them, merited and obtained the same punishment. To remedy the evils arising from the incapacity of a zemindar, and secure the rents of the State, an officer was often nominated to the charge of the lands. In this case, the zemindars in Bengal, as far as I can learn, still received *Nankar*, and in Behar, *Malikana*. I shall conclude these observations on the nature of the rights, privileges, jurisdictions, and services enjoyed, exercised, or performed by the zemindars, with a remark that, by the Mahomedan laws the principle which gives the sovereign a right to the produce of the soil, whilst it leaves the property in it to his subjects, is clearly and explicitly avowed; and that if the Moghul Empire was, in matters of finance, regulated by an opposite principle, the system was contrary to that religion which the emperors of Hindoostan professed and maintained.

In addition to the argument derived from the sunnud, against the prescriptive rights of the zemindars, the grant of lands conferred by *Altumgha* has been urged as a decisive proof, beyond controversy, that the property in land is exclusively vested in the Crown; and that the Emperors, so far from considering the zemindars as possessing any hereditable property in the soil, disposed of it in perpetuity to others. It is certain that lands under this tenure, exempt from all claims of rent, and descending by inheritance, are possessed to a very considerable amount in the Behar province. But there is one observation, and that very important; that all persons holding grants of land under this denomination, or of jageers, pay to the zemindars a tenth of the gross produce, or leave with them an equivalent to that amount in land, under the very expressive term of *Malikana;* which may be rendered *the right of proprietorship.* When it is considered that the altumgha grant has no reserve, or limitation; and that the persons who acquired by it the possession of land in perpetuity, had generally very considerable interest at court, it may be reasonably supposed, that they would not have relinquished any part of their sovereign's donation, except in compliance with an acknowledged right, whether derived from regal authority, or prescription. This fact exhibits a remarkable difference between the situation of the zemindars in Behar and Bengal. In the former province, they possess and claim a right to malikana, whether they have charge of the collections or not. In Bengal, they have nankar only, which does not in the aggregate exceed one per cent. on the revenues. There are many other distinctions, of which I shall notice a few only. In Behar, the zemindar, when in charge of the collections, or the aumil who stands in his place on the part of Government, divides the produce of the lands with the cultivators in stated proportions. In Bengal, the settlement is made with the ryot, upon a standard called the *Assul,* or original rate; with an accumulation of the taxes successively imposed. In Behar, the extent of zemindarry jurisdictions, compared with many of those in Bengal, is very limited; and though the zemindarry property, in the former province, seems more explicitly avowed and confirmed, yet the zemindars themselves have been more depressed and reduced. This is accounted for by the different systems of management adopted in the two soobahs; and by the numerous donations of altumghas, jageers and other rent-free lands in Behar. Yet it is too remarkable to be unnoticed, that notwithstanding the frequent transfers of the land by these grants, the right of the zemindars to malikana remains inviolate, under every change. Most of the considerable zemindars in Bengal may be traced to an origin within the last

century and a half. The extent of their jurisdictions has been considerably augmented during the time of JAFEER KHAN, and since, by purchases from the original proprietors; by acquisition in default of legal heirs; or in consequence of the confiscation of the lands of other zemindars. Instances are even related, in which zemindarries have been forced upon the incumbents.

I shall be happy if these remarks should be deemed to have elucidated the principle of the Mogul system of finance, and to have proved the inheritance and property of the zemindarry tenure to be compatible with it. Every allowance must be made for the difficulties attending researches of this nature, under the practice of an arbitrary form of Government, and with respect to a country subject to frequent insurrections and revolutions. Still, however, lest more positive proofs should be required, I have annexed authorities, deduced from established practice, and from the ordinances of the Emperors Aurungzeb, and Furukhseer, and the example of Jafeer Khan, the Nazim of this country. These will, I trust, elucidate the preceding arguments, and prove what I understand to be the established principle of Mogul finance as practised in Hindoostan, that *the rents belong to the sovereign, and the land to the zemindar.* The former administrations in this country both wisely and justly consulted the natives upon the rights of the zemindars; and so far from wishing to exclude their opinions, the first principles of equity require that the zemindars should themselves be admitted to plead their own cause. At least no judgment should be pronounced against them, until they have been heard in support of their real or presumed privileges. In a country, which, until our time, has been ruled by despotism, where the relation between the sovereign and subject is that of lord and slave, where the subjects are seldom allowed to think for themselves, and are often obliged to resign their reason and natural feelings to their ruler's will, it is not surprising that the natives should find it difficult to reconcile the lofty ideas imposed upon them by despotic power, with any original rights belonging to themselves. But in an enquiry of this kind, I conceive it both justice and policy to appeal to them; and I have accordingly proposed a series of questions respecting the zemindarry tenure and its rights, to those who, from their situation or knowledge, either possess or have the means of acquiring information. Their sentiments will be found to agree generally with those which I have maintained. They know, at least, what has been left to them, from whatever source it was derived. This they claim, and thus far their opinions will be found consistent and well informed.

The question of policy now remains to be discussed, and this I shall answer by extracting from Bernier the description of the real situation of the land and people, under a form of Government, where the sovereign was supposed to have declared himself the proprietor of all the lands. *The peasant reasons thus*—'Why should I toil so much for a tyrant, that may come to-morrow to take all away from me, or at least all the best of what I have, and not leave, if the fancy taketh him, so much as to sustain my life even very poorly?' And the Temariot, the Governor, and the farmer will reason thus with himself—'Why should I bestow money or take pains of bettering or maintaining this land, since I must expect every hour to have it taken from me, or exchanged for another? I labour neither for myself nor for my children; and that place, which I have this year, I may perhaps have no more the next. Let us draw from it what we can, whilst we possess it; though the peasant should break or starve, though the land should become a desert, when I am gone.' And for this very reason it is, that we see those vast estates in Asia go so wretched and palpably to ruin. Thence it is that, throughout those parts, we see almost no other towns but those made up of earth and dust; nothing but ruined or deserted towns and villages, or such as are going to ruin. In conclusion, to be short, I say that the taking away this propriety of lands amongst private men, would be infallibly to introduce, at the same time, tyranny, slavery, injustice, beggary, barbarism, desolation, and to open a highway for the ruin and destruction of mankind, and even of kings and states; and that, on the contrary, this *Meum* and *Tuum*, accompanied with the hopes that every one shall keep what he works and labours for, for himself and his children, as his own, is the foundation of whatever is regular and good in the world.* To this reasoning

Sixth note added to the minute.

* "I have quoted the authority of Bernier, not only because I conceived his description just and his arguments well founded, but to point out his opinion as it stands in opposition to my own. Bernier resided chiefly at the capital of the empire, and his connections were with the officers of the court. Notwithstanding this and the opportunities of information he may be supposed to have had, I cannot agree with him in the universality of his assertion, that all the lands of the empire, with a few exceptions, which he details, were considered as the property of the crown. He resided in India during those contests which fixed Aurungzeb upon the throne, when the empire was in a state of confusion, and the license of individuals was suffered to act uncontrolled. But whatever may have been the case in those places which fell under his immediate observation, I cannot admit it to be generally applicable, although I fully agree with him in the conclusions drawn from his own principles. In one sense the sovereign may, by a fiction, be styled the proprietor of the soil, since he exacts from all lands whatsoever a proportion of the rents thereof, which proportion is not

and description, founded on true principles and just observations, I shall add one remark. If a Government which judged arbitrarily, and punished summarily, could not correct the evils resulting from the discretional exercise of authority, still less will it be in the power of an administration acting upon fixed laws and milder principles; and the English Government of this country being composed of members in a constant state of fluctuation, the necessity of fixing by law the rights of the people is absolute and indispensable. (*Pages 228—247.*)

Extract from Questions to Gholam Hussa'n Khan and his answers on the rights and privileges of landholders. Appended to Mr. Shore's Minute.

Question 1st.—What is a zemindar? and what is a zemindary?

Answer.—The literal meaning of the word *zemindar* is *possessor*, or proprietor, *of land*; in the same manner as *Maldar* signifies possessor of property, or *Zurdar* possessor of money; but in its general accepted meaning it implies a proprietor of land who pays rent to the Emperor, or any other ruler, and is equally applicable to every landholder, whether possessing a greater or a less number of villages, or only a portion of a village. Land being a species of that property which is deemed transferable, in all countries, the proprietorship of it may be obtained in the same manner as that of any other property of a similar nature,—by gift, sale, or inheritance. The true and rightful proprietorship of land may be obtained by either of the three following modes:—by purchase, with the mutual consent of the parties; by gift from the proprietor; or by inheritance.

Question 2nd.—How is a zemindar appointed?

Answer.—According to strict right, no person can become the proprietor of land, but by one of the three abovementioned modes, though by usage the Emperor, or his representative, being displeased with a zemindar on account of his contumacious and refractory behaviour, may displace him, and appoint another by sunnud in his room. The person so appointed is by usage considered as zemindar and proprietor of the soil, though according to strict right he be not so. It is further to be observed, that since the decline of the constitution in the reign of Furukhseer, and the introduction of the farming system, at the recommendation of Ruttunchund, when corruption pervaded every department of the State, the unprincipled zemindars, by ingratiating themselves with the aumils, or rulers, for the time being, distressed the inferior zemindars by every possible mode, until they were reduced to the necessity of selling their zemindaries to their oppressors, who thenceforward became, by virtue of usage, not of right, the acknowledged proprietors of them. Other zemindars, having desolated their lands by mismanagement and dissipation, were obliged by the ruling power to dispose of them to more prudent and opulent zemindars for the liquidation of their balances. The title of the purchasers of such land was considered good and valid. Towards the close of the reign of Mohummud Shah, during the administration of Ramnarain and Jankeram, and other Nazims of the Behar Province, certain zemindars, by attaching themselves to these officers, acquired great influence; and either by force or under different pretences, unjustly possessed themselves of the estates of the inferior landholders, till at length becoming rich and powerful, through the connivance of the Nazim, who permitted these usurpations, they declared themselves the proprietors of the lands thus unfairly acquired. It was by the above modes that many zemindars of this province augmented their possessions. From being proprietors of a talook, they became possessors of a pergunnah; and from possessors of one pergunnah, they became possessors of many.

Question 3rd.—Has he any and what rights or immunities?

Answer.—A zemindar enjoys no privileges from the ruling power beyond those of a ryot, which are, that no oppression be practised upon him; that his person and property be not unjustly molested; that in case he improve his lands, duly discharge the dues of Government, and avoiding contumacy, prove himself on all occasions a well disposed subject, he be allowed nankar, and be showed such other indulgences and favors as his fidelity and attachment may entitle him to.

Question 4th.—Whence are these rights and immunities derived?

Answer.—The zemindars possess no other rights or privileges than those above specified; and these have existed since the first establishment of a ryot and a hakim; and must continue to exist until their annihilation, whether the aumils, or farmers, pay attention to them or not.

Question 5th.—Is a zemindary hereditary?

Answer.—Whatever land a zemindar may have become the proprietor of, by any one of the three abovementioned modes, descends in the line of inheritance, since whatever is actual pro-

fixed by any positive law, but discretional: and Bernier's assertion may have been founded on this explanation; which, though it renders the property of the zemindars very precarious, cannot be affirmed to destroy it. Bernier's opinion has been adopted by many other writers. An extract from Harris's Voyage, which has already been quoted by a former member of this Government, whose abilities have thrown much light upon the subject, stands in opposition to it, and is as follows: "*Zemin* signifies land, and *zemindar* is one who possesses land; who pays some acknowledgment to the emperor; but who is notwithstanding the free lord of his inheritance. The zemindar and jageerdar both possess lands but by very different titles; for the former is a free holder, and the latter a tenant-at-will, by the grant of the emperor. *Dar* signifies a possessor, that is to say, one who holds or enjoys anything." (*Harris's Voyages*, Vol. I., page 695).

perty, such as plate, houses, and other transferable effects, is necessarily hereditary; but whatever is not actual property, is consequently not of an hereditary nature. (*Pages 314—316.*)

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Question 20th.—A zemindar is bound to pay the amount of his revenues to the ruler. By what criterión were they settled anciently?

Answer.—A specific rate was never fixed. In the reign of Akber, and for a long time after, the rents were paid in kind. This mode was highly favourable to the ryot, and consequently productive of cultivation. But the farming system, introduced by Furukhseer, had an opposite tendency. On the decline of the Imperial authority, many of the Omras in power, such as the Nuwab Muhabut Jung, Nazim of Bengal, and Zehinah Khan, Nazim of Lahore, consulting the prosperity of the country, cherished the ryots and encouraged cultivation: while others, like Boorhan-ool-Moolk, whose views were directed to a different object, oppressed the landholders of every class, and rendered the country desolate. Although the exact quantum of Government's share of the crop be not recorded in the Ayeen Akbery, yet it may be collected from that work, that the quantity was regulated by the produce; and that no more than the stipulated amount was exacted. At the introduction of farming, the khalsah aumils gave in proposals for their respective pergunnahs; whereupon pottahs and cubooleeuts (mutual engagements) were exchanged between them and Government; and agreeably to those engagements the amount of the stipulated revenue was discharged: unless the aumil stated heavy losses from the severity of the season. In that case the truth or falsity of his representation was ascertained by the deputation of an ameen, agreeably to whose report a remission was granted, or withheld, according as the claims of the aumil seemed well or ill founded. The aumils made the collections by no prescribed or settled rules. Some conducted them by open violence and oppression; some by fraud and cunning; and some with only a small degree of rapacity: though all of them collected sufficient to answer the demands of Government; to defray their immediate expenses; and to provide a fund against future exigencies: so that in fact each person exacted whatever he chose.

Question 21st.—Did they anciently execute any cubooleeuts for a specific sum?

Answer.—The crories, after ascertaining the harvest to the satisfaction of the ryot, divided it between him and Government agreeably to the terms of stipulation. If the ryot voluntarily tendered the value of Government's share in money, at the market price of grain, the crory could not refuse to receive it. When the mode of receiving the revenues in kind was superseded, by the introduction of the farming system the aumils entered into engagements for the payment of a specific sum. If the amount had not been specified, to what end were leases and cubooleeuts granted and executed? The business, however, was conducted in such a manner that the aumil derived a profit, at the same time that the zemindars and ryots enjoyed a competency. Towards the close of the Soobahdary of Muhabut Jung, the zemindars of Behar, in consequence of the supineness of Rajah Ramnarain, obtained the management of the collections: and entered into annual engagements for the revenues, which they with difficulty fulfilled in the course of two years.

Question 22nd.—Was the zemindar bound by any, and what rules in collecting the rents from the ryots?

Answer.—Heretofore the ryots and zemindars divided the harvest between them in equal proportions. The rights of the ryots were by these means preserved; and their happiness and ease consulted. But for 17 or 18 years, the renters, actuated by a variety of motives, have laid a general assessment upon the ryots, equal to the amount required, according to their own calculations, to enable them to fulfil their engagements; and if this proved inadequate to the object proposed, including their own profits and expenses, they added a further assessment, until they obtained the sum required, without any regard to the capacity of the country, or the ability of the ryot. This is the only practice I am acquainted with, or have ever heard of; excepting, indeed, that from the time of Akber until the reign of Buhadoor Shah, the rents, which were generally received in kind, were collected from the ryots conformably to their engagements, and according to the nature and extent of their land. If the ryot preferred paying his rent in money, it was in his option to do so. Government's share of the crop was in such case valued at the current market price of the articles produced.

Question 23rd.—What proportion of the produce did the ryots pay to the zemindar or aumil?

Answer.—What power have the helpless ryots to give anything to the zemindar? Their whole hope is centred in being allowed to receive their own rightful share, which is half, or something less than half, of the produce. The remainder the zemindar, or aumil, appropriates to the dues of Government, and to his own subsistence. In the early part of the Company's administration, when the zemindars possessed unlimited authority, they usually oppressed the ryots for the payment of the revenue, which was then very heavily assessed;

insomuch that the ryots did not receive even a fourth of the produce. In those days the sole object of the renters was to complete their engagements and obtain an exorbitant profit. Afterwards, when the country became desolate, hey were obliged to rest contented with paying the stipulated revenue and deriving a sufficiency for their own immediate subsistence, and this is at present the case in many places. An over-assessment ruins either the renter or the country, or perhaps both, since the former, after levying heavy and ruinous exactions upon the latter, must still be unable to fulfil his engagements, the consequence of which must be imprisonment and ruin. Though half of the crop be strictly the ryot's due, yet he thinks himself fortunate if he can get 7 out of 16 pusseries of the produce. But how is it possible that he should receive even this quantity, since the renters, without any previous knowledge of the capacity of a district, enter into engagements for more than its actual produce, and are in consequence compelled, through necessity, to make up the deficiency by every species of exaction upon the ryot? The cultivation of the country might however be restored were the cultivator allowed his just proportion of the produce; and though restoration of this right to him might be attended with a temporary loss to Government, it would ultimately operate to its benefit.

Question 24th.—Was the proportion fixed, and if it was, by what law?

Answer.—The proportion in well-cultivated land is established at half the produce, as above stated; but where the land is poor, the proportion depends upon the terms that the cultivator may be able to make with the renter.

Question 25th.—Have any, and what alterations taken place in this proportion, and by what authority and usage?

Answer.—The original proportions have been specified above. I shall therefore here state the causes of the subsequent deviations. Among these the principal was the adoption of the farming system, which was, as it were, selling the ryots and the country to the farmers, and authorizing every species of rapacity and oppression, since the sole objects of the farmer were to fulfil his engagements to Government and replenish his own coffers. His engagements bind him to pay a certain sum to Government; in every other respect he is left at liberty to act as he thinks proper. His first request is that no complaints against him from the ryots or others be attended to This concession is usually granted and as usually abused. I have seen with my own eyes hundreds of ryots, with ploughs upon their shoulders, come to complain against the aumil, but no one listened to their representations; and hence it is that the country is reduced to its present state. Whoever possessed power used it as he pleased. In the time of Muhabut Jung, the farmers did not make any exorbitant demands upon the more powerful zemindars from an apprehension that the opposite conduct might create disturbances, which it would require more than double the amount of the revenues to quell. It was then that the zemindars, by taking from the ryots no more than was just and proper, kept their lands well cultivated; and, after liquidating the demands of Government, were enabled to live in some degree of state and consequence. But on the accession of Casim Alee Khan they were entirely subverted; and the jumma which his aumils collected from the pergunnahs, instead of being the regular produce of the country, arose from the plunder of the ryots. The officers employed by the Company, on their accession to the dewany, finding the above-mentioned jumma inserted in the accounts, in order to save their own credit continued the assessment at that standard; and the aumils were of course compelled to realize it, though the ruin of the country was the inevitable consequence. Mr. George Vansittart, at the complaint of the ryots, established the share of the produce receivable by Government at 9-16ths; and that receivable by the ryots at 7-16ths; and these proportions are still nominally preserved, though, in some places, owing to the want of sufficient assets for the sudder jumma, the cultivator receives less than his due proportion, the renter of the district, provided he can contrive to fulfil his engagements, being perfectly indifferent in regard to the welfare of the ryot, or the improvement of the country. (*Pages 322—327*)

Questions to the Royroyan and his answers. Appended to Mr Shore's Minute.

Question 1st.—What is a zemindar, and what is a zemindari?

Answer.—A zemindar is a person possessing hereditarily, on the condition of obedience to the ordinances of Government, a tract of land under the denomination of a pergunnah, or chuklah, subject to the payment of revenue; and a zemindary is that land registered in the records of Government in the name of such person.

Question 2nd.—How is a zemindar appointed?

Answer.—On the demise, or ejectment, of a zemindar, his successor, after having proved his hereditary right, is appointed by virtue of a dewany sunnud, on paying a nuzerana and paishcush, as established by former rulers for the advantage of Government, so that in fact the succession to a zemindary is by inheritance.

Question 3rd.—Has he any and what rights and immunities?

Answer.—The rights of a zemindar are restricted to his *birt, khamar,* and *muzkoorat,* that is to say, zemindary charges; *nankar, dustoorat, malikanah,* &c.; and the duties of a zemindar comprehend a complete discharge of his revenue; the cultivation and improvement of his country; the protection and security of his ryots, in conformity to the usage of the country; his conduct of any other affairs committed to him; and a constant observance of the orders and regulations of the ruling power.

Question 4th.—Whence are those rights and immunities derived?

Answer.—A zemindar derives his rights either from his ancestors who enjoyed them before him, or from the purchase of the inheritance of another, or from the attainment of it by the payment of a nuzeranah, paishcush, &c. It is incumbent upon him, in each case, to obey the ruling power, to be responsible for the affairs of his zemindary, to defend his country, and to cherish his ryots.

Question 5th.—Is a zemindary hereditary?

Answer.—For a long time past zemindaries have descended in the line of inheritance. The revenue is the right of Government, and the soil the inheritance of the zemindar, hence a zemindary is hereditary. (*Pages 340—341.*)

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Question 22nd.—Was the zemindar bound by any, and what rules in collecting the rents from his ryots?

Answer.—The *assul* rent was levied from the ryots according to the jummabundy, or rate of assessment, of each village; the *abwab* according to the rate of each pergunnah; and the charges, *muthote,* &c., according to the rate of each chuklah. In making the collections regard was always had to the time of harvest and ability of the ryots.

Question 23rd.—What proportion of the produce did the ryots pay to the zemindars anciently?

Answer.—In the Soobah of Bengal the ryots have always paid their rents in money. The crop of the khamar land is usually divided between the zemindars and ryots in equal proportions, though in some places the latter are allowed more, and in others less; but for this fluctuation there is no specific rule. In the Soobah of Behar custom has established the share of the zemindar at 22½ seers, and that of the ryot at 17½; but variations from these proportions occasionally occur.

Question 24th.—Was this proportion fixed? and if so, by what law?

Answer.—Exclusive of the proportions specified in the preceding article, an addition of 2 or 3 seers was exacted from the ryots at the time of reaping and gathering in the harvest, under the head *Bihraee* and charges of *kunkoot,* or valuation of the crop.

Question 25th.—Has any and what alteration taken place in this proportion? if there have, by what authority, or custom, was the innovation introduced?

Answer.—The proportions specified in the written engagements throughout the mofussil have undergone no variation; though some zemindars and farmers, at the time of the harvest becoming ripe, have broken through their agreements, and under the pretence of charges and Bihraee have exacted more than their due, from a principle of dishonesty in themselves, and from a want of vigilance in the officers of Government. (*Pages 346 & 347.*)

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Question 45th.—What is the nature of ryoty puttahs; are they of different kinds or not?

Answer.—The meaning of a *puttah* is a lease for land, under an agreement to pay the rent of it, and comprehending a specification of the amount. In some places the puttahs specify both the amount of rent and the quantity of land. They are however of various kinds, such as *Mocurruree* (permanent); *Theeka* (specific); *Shurh Mouza* (at the village rate); *Shurh pergunnah* (at the pergunnah rate); *B'il Mookta* (adjusted); *Khoodkasht* and *Paekasht* (as granted to resident or non-resident cultivators); *Noudbad* (for lands newly cultivated); *Jungul-booree* (for clearing wood); *Sáir* (for duties); *Khaláree* (for salt manufactories); *Shuhd* (for honey); *Móm* (for wax); and various other denominations.

Question 46th.—If of different kinds, specify the nature of each?

Answer.—The objects of the various kinds of puttahs, which the zemindars grant, as it were in the nature of charters, to the ryots, are to ascertain the precise amount and rate of the rent for the satisfaction of the ryots, to prevent a deviation from the articles of stipulation, to guard against a difference of account, and to obviate the inconveniences of a change of officers.

Question 47th.—Is the property of the soil vested in the king, the zemindar, or the ryot?

Answer.—The sovereign is the proprietor, as well of the revenue as of the country; and as the revenue arises from the land, he is so far the proprietor of the soil also. In consequence

of paying the revenue, of submitting to the authority of the sovereign, and of succeeding to the inheritance of a zemindary by lineal descent, with power of alienation by gifts or sale, a zemindar becomes the proprietor of the lands of his own zemindary. A ryot being a tenant, holding under a puttah, and possessing no authority to sell or give away, has consequently no property in the soil.

Question 48th.—In what manner are the revenues collected from the ryots?

Answer.—In the Soobah of Bengal the putwary of the village makes out the accounts of the ryots according to their puttahs, including the abwabs, agreeably to the rate of the village, and collects the revenues accordingly. In the Soobah of Behar, the collections are regulated by the quantity of the produce, ascertained at the period of the harvest. (*Pages 353 & 354.*)

Mr. Harington's own observations on the same subject (i.e., the rights of zemindars.)

In a letter addressed to the Court of Directors by the Governor General in Council, on the 10th August 1789, subsequent to the despatch of Mr. Shore's minute on the rights of zemindars, the following observations were added, in reply to some remarks from the Honourable Court on the subject of Mr. Grant's discussion of the rights of zemindars, and the opinion given by the committee of revenue in March 1788.* "It does not appear to us that any further lights into the rights of the zemindars, can be obtained by a professed investigation of them. You have already before you, in the discussion of the subject, the evidence of the natives, and the practice of the native administration; and any further information from history must be merely accidental. The fact, as far as we are informed, is that the oriental historians nowhere treat the subject professedly; and all that can be gleaned from a research into them can only be obtained by inference from a very few facts, which are merely sufficient to repay the time and attention necessary for the investigation. This remark is particularly apparent from a perusal of the institutes of Akber, translated by Mr. Gladwin, where we might reasonably expect to find observations and reflections upon the rights of the zemindars. The discrimination pointed out in the 33rd paragraph † was not overlooked by Mr. Shore in his

* *Extract of a letter from the Court of Directors, dated 20th August 1788*

Paragraphs 28 to 32.—"We have perused with attention Mr Grant's discussion of the rights of zemindars; but we should have thought our Supreme Government very blameworthy if, upon his suggestion, or upon being ever so much urged to adopt that line of conduct by the committee of revenue, they had ventured to issue any public declaration which would have abrogated the claim the zemindars have been supposed to enjoy to an hereditary possession; and thereby precipitately committed the national faith and honour upon a subject of so much magnitude. Neither can we observe, without astonishment, the levity with which this most important consideration has been treated in the discussions of the committee. The common sunnud or patent of a zemindar does not certainly, in terms, confer an hereditary tenure; and we have never seen it ascertained, whether in ancient times the sunnuds were granted in the same form and tenor, for all the classes of zemindars described by the Nabob Mahommed Reza Khan, in his remarks delivered to our President and Council in September 1773; but it seems to be admitted, on all hands, that hereditary descent and succession (and in many cases mortgage and alienation) have long been usual in Bengal and Behar; and that notwithstanding the various revolutions at Delhi, and in the provinces, this rule has rarely been interrupted; but for acts of atrocity, which might incur forfeiture, default of revenue, or failure of heirs. This doctrine is very much confirmed, instead of weakened, by the account of the four principal zemindaries prepared by the dewan, and delivered in by Mr. Cowper Moreover, we believe it is a fact, that many of the present zemindars are the lineal descendants of those persons who possessed the lands before and under the conquest of Bengal by the Emperor Akber, about two centuries ago. In like manner it is certain that the idea of an hereditary tenure has been sanctioned by repeated discussions of the British Parliament. It has been recognized also by the undeviating practice of our Governments in Bengal, and of all the dewanny courts since our possession of the country, and that not as mere acts of grace, or personal partiality, but as the dues of justice, yielded to those having a fair right to demand them. With all this evidence of fact before us in favour of the zemindars, we should not hold ourselves warranted in so monstrous an exertion of the powers vested in us by the legislature as that of nullifying, upon a mere theoretic opinion, all the supposed property of an extensive territory; and which, even if it were decidedly legal and politic, would not probably be effected without danger of revolt, or general injury to the country As this great question has been agitated by our servants in Bengal, we wish to examine it without prepossession; and conceiving it to be our duty to declare these sentiments to you, we direct that your conduct may be made conformable to them. So far as to the right or usage of inheritance. We shall subjoin a very few general remarks that occur to us upon another part of Mr. Grant's discussion, which is, to all appearance, a just and ingenious analysis of the original land rent system of Rajah Tuder Mull"

Paragraph 33.—"What particularly strikes us, in reflecting upon this question about the rights of zemindars, is, that it ought to be regarded under two distinct points of view; and that the want of that discrimination, in all discussions we have hitherto read, has given birth to much perplexity, and sometimes much misconstruction. First, as to the nature of the tenure; whether creative of a property, or incidental to one previously existing; and whether that tenure was originally, or is by usage become hereditary. Secondly, as to the mode by which the sovereign did, at the moment of conquest, assess the revenues of his territory; how far that standard has been observed in succeeding practice; whether resort has been had to it upon new grants of zemindary, given in cases of escheat or forfeiture, or in instances of defalcation occasioned by the ravages of an enemy, encroachment of borderers, alluvion, and such contingencies as must in every country render a new valuation of the revenue indispensable. This latter subject is not comprehended in any of your deliberations. We have therefore no grounds to form our judgment upon. But we are of opinion that if some permanent standard were established, and universally admitted, to ascertain and fix the proportions of revenue accruing respectively to the State, the landholders, and the cultivator, numberless doubts and jealousies would be obviated; and the whole would be united in one general bond of interest justice, and security."

† The paragraph referred to in the preceding note.

minute on this subject transmitted to you on the 6th March 1788 by the *Rodney;* and some of the questions proposed to the natives have a reference to it. In a subsequent minute on the subject of the proposed permanent settlement, which is now under consideration, he has collected into one point of view all that he deemed himself authorised to assert upon the rights of the zemindars and talookdars. We are fully aware of the policy of ascertaining and fixing the proportions of revenue accruing respectively to the State, the landholders, and the cultivators; but it is the most difficult of all points to execute. To accomplish it fully may, perhaps, not be immediately practicable; but we shall endeavour to effect the object of it, as far as possible, by the best rules and regulations which we can devise for the security of the cultivator of the soil, and the intermediate classes of tenants and proprietors between him and the Government, against vexatious demands and impositions; and this we presume to be in a great degree attainable."

Mr. Shore's minute on the permanent settlement of Bengal, which is referred to in the above extract, will be cited in the next section, what is stated in it, on the rights of zemindars and talookdars, having an immediate connection with the rights of under-tenants. But it may be here observed that the Court of Directors, in their general letter of the 19th September 1792, which conveyed their final sentiments and orders upon various points involved in the perpetual assessment of the land revenue, and the conclusion of a settlement for it with the landholders, expressed themselves, on the subject of *the landed rights of the zemindars,* in the following terms:—"In former despatches we have, on different occasions, conveyed to you our sentiments on that point, though we have also stated that we felt the materials before us to be insufficient for forming a decisive opinion. On the fullest consideration, we are inclined to think that whatever doubts may exist with respect to their original character, whether as proprietors of land, or collectors of revenue, or with respect to the changes which may in process of time have taken place in their situation, there can, at least, be little difference of opinion as to the actual conditions of the zemindars under the Moghul Government. Custom generally gave them a certain species of their hereditary occupancy; but the sovereign nowhere appears to have bound himself by any law or compact not to deprive them of it; and the rents to be paid by them remained always to be fixed by his arbitrary will and pleasure, which were constantly exercised upon this object. If considered therefore as a right of property, it was very imperfect and very precarious; having not at all, or but in a very small degree, those qualities that confer independence and value upon the landed property of Europe. Though such be our ultimate view of this question, our originating a system of fixed equitable taxation will sufficiently shew that our intention has not been to act upon the high tone of Asiatic despotism. We are, on the contrary, for establishing real permanent valuable landed rights in our provinces, and for conferring such rights upon the zemindars; but it is just that the nature of this concession should be known, and that our subjects should see they receive from the enlightened principles of a British Government what they never enjoyed under the happiest of their own."

I must refer those, who may be desirous of entering more fully into the discussion of the rights of zemindars, and the nature of their landed tenures, to *an inquiry into the nature of zemindary tenures in the landed property of Bengal, &c.,* which was published in 1790, by Mr. James Grant, *late Serishtahdar,* and to *a dissertation concerning the landed property of Bengal,* which was soon afterwards published in answer to the above, by Mr. C. W. Boughton Rouse, then Secretary to the Board of Control.

Mr. Grant maintains it to be a fundamental principle in all the Native States of Asia, "*that the sovereign is sole universal proprietary lord of the land;* and that the *ryots,* who are husbandmen or peasantry, hold directly of the prince, by immemorial usage, as perpetual tenants *in capite,* subject to the annual payment of a certain fixed portion of the gross produce of the soil, in money or kind, to be collected through the intermediate agency of farmers general, or temporary commissioned officers of the crown;" *viz.,* the zemindars, whose tenure is considered to be an office, with certain rights and privileges annexed to it, "held by temporary conditional grant." It is denied by Mr. Grant, "that the property of any lands in Bengal, excepting those held under the special grant of *altumgha,* and conditional *talookdary* and *ryoty* tenures, is or can be considered, according to the laws and established customs of the country, an inheritable property; or that it is otherwise vested in any class of Hindoo subjects as *real property,* in the common English acceptation of the terms." It belongs, he adds, "exclusively to the crown, under the description of *khalsa,* or royal domains, and of *jageer,* or feudal possessions; the latter bestowed for life, or officially, on the higher officers of state, military commanders, and omrahs of the court, constituting the great and only body of nobles, known throughout the whole and still existing divisions of the Moghul Empire, and who may also be considered as *proprietors of landed estates* of the nature of benefices, or temporary fiefs." Mr.

Grant, however, admits the following modifications of the general principles maintained by him :—*1st*, "That a possessive tenure of certain subordinate territorial jurisdictions, called zemindaries, in virtue of a sunnud, or written grant, determinable necessarily with the life of the grantee, or at the pleasure of the sovereign representative, is universally vested in certain natives, called *zemindars*, that is technically *holders of land*, merely as farmers-general, or contractors for the annual rents of Government, with certain specific allotments of landed property, called *Nankar*, or means of subsistence, included in their respective jurisdictions; such property being always of small comparative extent, seldom more than one-twentieth part of the whole zemindary, when rightfully held, and invariably annexed to the patent office of zemindar; which generally confers not only the subordinate management of the revenue, but an inferior juridical authority similar to that of an English Justice of the Peace." *2ndly*, "That within the larger zemindary jurisdictions, sometimes the proper official possessors of these, and in many instances other natives, called talookdars, hold certain copyhold rights of property, otherwise independent of the zemindary; and which, being of inconsiderable extent, of accurately ascertained value, and fixed rental, frequently acquired by purchase, though generally in the first instance, through court-favour, bestowed on wealthy individuals resident in, or near, the Mussulman capitals, are usually allowed to descend by the rule of inheritance; and, with the special sanction of the dewanny, or financial administration, may be otherwise transferred or sold at the discretion of the actual occupant, reserving always to the crown its proper original dues of rent." *3rdly*, "That under both these distinctions of farming landholders, called zemindars and talookdars, a third class of the natives called ryots (husbandmen or peasantry) hold certain rights of property in the same lands, independently of any intermediate orders of the landholders, as perpetual registered tenants of the crown *in capite*, by virtue of a leasehold tenure in writing, called *pottah*, insuring to them, according to the established usage of the country, certain permanent undisturbed possession heritably, while they continue to pay regularly, through zemindar-contractors, farmers-general, or other appointed collectors, the annual rents of Government, at fixed specified rates of assessment, in money or kind, proportioned to the sovereign's general demand on the soubah, or province, formed on a medium of the gross yearly produce of the soil." In a letter addressed by Mr. Grant to the Board of Revenue, under date the 1st March 1787, and printed in the appendix to his treatise on zemindary tenures, he gives the following more enlarged statement of the *privileges of zemindars*:—"These, though not ascertainable by their sunnuds, are equally to be learnt as precise matters of fact, from notorious usage, and revolving customary forms of the year in settling the jummabundy. The first essential privilege is that by which the zemindar is entitled to stand in the place of a perpetual farmer-general of the lawful rents claimed by Government, within the circle of his jurisdiction; nor can he, or ought he, constitutionally, to be deprived of any contingent emoluments proceeding from his contract, during the periods of his agreements, though such should arise in concealment of the entire public resources on his part, with the corruption or ignorance of the other financial officers of the state. A second privilege annexed to the office of zemindar is that of being made the channel of all mofussil serinjamy disbursements. A third is that of improving waste grounds, under certain limitations, to his private advantage, at least for the period of his bundobusty engagement; though not, as more recently practised, by the depopulation, or fallow, of other productive lands, assessed for rent to the exchequer. A fourth is that of granting pottahs for untenanted farms in the ordinary terms of an Indian leasehold, yet more or less substantially beneficial to the occupant, in proportion to the favour of his superior landholder. A fifth is the privilege of distributing internally, as he pleases, the burthen of *abwabs*, or additional assessments, when levied, as in Bengal, on the ausil jumma, by zemindary jurisdictions, and not specifically by pergunnahs. A sixth is that of paying his rents in money or kind, agreeable to established rules adapted to either mode, provided these obtain universally over one or more stated divisions of country. A seventh is that of adoption, or nomination of a successor to his zemindary, when done in his lifetime, and not by will, with the approbation of the sovereign representative, to be confirmed by dewanny sunnuds. An eighth privilege is that of being considered to appear in the Huzoor, or presence, by deputy, in his proper behalf, or that of any of the ryots subordinate to his authority, unless summoned on some extraordinary occasions by a special writ applicable personally to himself. And these appear to me to be all the real privileges of a zemindar."

Mr. Rouse, whose tract was dedicated to the Right Honourable Henry Dundas (then President of the Board of Control,) with an observation, that he knew the mind of the latter to have "long been satisfied on the subject of the hereditary title of the zemindars, to the lands which have been continually occupied by them and their ancestors, nor less upon the expediency of confirming them, even if their positive claim were dubious," introduces his own view of the state of landed property in this part of India, which corresponds in substance with

that of Lord Teignmouth, in the following terms:—"For my own part, the farther I have carried my enquiries, the more firmly I am convinced, that the state in which we received the rich provinces of Bengal, Behar, and Orissa, was a general state of hereditary property, modified certainly according to the nature and customs of the Government which has prevailed there; but, nevertheless, existing with important benefit to the possessors, according to the universal sense of the people, sanctioned by the constant practice of the native princes, and established by immemorial usage from one end of the country to the other. I did imagine that this question had received its decision by the common assent of all political parties in the kingdom, resulting from the minute examinations which had been made into the subject, at a period when correct local knowledge was attainable; and by the voice of several statutes, passed by the two last parliaments, in the years 1781 and 1784, in which, amongst many salutary regulations, the zemindars and other landholders are distinguished from persons holding mere official nominations, and marked as a class of men eminently entitled to the national protection. I had, therefore, concluded that they would have been permitted to enjoy, in gratitude and security, that protection held out to them by the legislature of Great Britain, and should have feared to injure their cause by renewing the discussion, had not the subject been again introduced to the public consideration, in a tract lately published under the singular title of *Inquiry into the nature of zemindary tenures, in the landed property of Bengal, &c., by J. G., late serishtadar of Bengal.* I must do this gentleman the credit to say, that his sentiments are here delivered without any tincture of party, or personal invective, except only against the great Mahomedan and Hindoo officers, whose opinions have been quoted in a very able performance of Mr. Francis, relating to the revenues and tenures of Bengal. By attempting to demonstrate that the zemindars and other landholders of Bengal have not, nor ever had, any claim of hereditary property, and that they ought to be considered as financial servants only, employed to collect the ground-rents of the sovereign, as proprietor, or, as the title expresses it, having a tenure in his landed property, Mr. Grant would seem to invite this country to retract its plighted faith in their favour. I have not a doubt that he wishes to establish this opinion out of sincere zeal for the public interest and administration which, he imagines, would be benefited by annihilating such supposed property. I confess my cordial wishes and endeavours, as far as the endeavours of an humble individual could avail in a great national object, have gone to promote a contrary system; and as no circumstances have hitherto produced any alteration in my sentiments, I find myself impelled by the importance of the occasion to declare, that I differ from him fundamentally in many articles of fact, justice, and expediency." It would add too much to the bulk of this volume to attempt any general illustration of the points of difference referred to; and it is the less necessary as Mr. Rouse, though he purposely "avoided quoting any discussions of individuals, except such as had before been given to the public in a historical point of view," and "chose rather to confine himself to his own observations upon original documents," yet supported his opinion of the rights of zemindars and talookdars, partly on the same authorities, and generally by the same course of argument, as have been stated in Mr. Shore's official minute on the rights of those descriptions of landholders, and its appendix. (*Pages 357—366.*)

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It is by attempting to assimilate the complicated *system which we found* in this country, with *the simple principles of landlord and tenant* in our own, and especially in applying to the Indian system terms of appropriate and familiar signification, which do not, without considerable limitation, properly belong to it, that much, if not all, of the perplexity ascribed to the subject has arisen. If by the terms *proprietor of land*, and *actual proprietor of the soil*, be meant a landholder possessing the full rights of an English landlord, or free-holder in fee-simple, with equal liberty to dispose of all the lands forming part of his estate, as he may think most for his own advantage; to oust his tenants, whether for life, or for a term of years, on the termination of their respective leaseholds; and to advance their rents on the expiration of leases, at his discretion; such a designation, it may be admitted, is not strictly and correctly applicable to a Bengal *zemindar*, who does not possess so unlimited a power over the *khoodkasht* ryots, and other descriptions of under-tenants, possessing, as well as himself certain rights and interests in the lands which constitute his zemindary. But Colonel Wilks with a view to guard against this ambiguity of expression, has defined the sense in which he proposes to use the word *proprietor* as follows:—'In England a proprietor of land, who farms it out to another, is generally supposed to receive as rent a value equal to about one-third of the gross produce. This proportion will vary in different countries according to circumstances; but whatever it may be, the portion of it which remains, after payment of the demands of the public, may safely be described as the proprietor's share of the produce of his own land; that which remains to him, after defraying all public taxes, and all charges of management. Wher-

ever we can find this share, and the person entitled to receive it, him we may, without the risk of error, consider as the proprietor, and if this right has descended to him by fixed rules from his ancestors, as the hereditary proprietor.' According to this definition, it cannot, I think, be denied that a zemindar is, in a restricted sense, *an hereditary proprietor.* His zemindary descends to his legal heirs by fixed rules of inheritance. It is also transferable by sale, gift, or bequest. And he is entitled to a certain share of the rent produce of his estate if it be taken out of his management; or if he manage it, and engage for the public assessment, he receives whatever part of the rents may remain, after paying the assessment and defraying the charges of management. It must however be allowed that the peculiar tenure of a zemindar, as it existed under the Mosulman Government of Bengal and the adjacent provinces (especially with regard to the principal zemindars, who held their zemindaries, with certain services attached to them, under a sunnud of grant or confirmation), partook more of the nature of an *hereditary* office, with certain rights and privileges attached to it, than of a proprietary estate in land; though it is justly observed by Mr. Rouse, that 'if the zemindary be even an office, and such office give possession of land, which has, by claim or custom, descended from father to son, or to collaterals, with other circumstances incident to property, such as mortgage, alienation, bequest, or adoption, it is in reality a *landed inheritance.*' The subjoined definition of a zemindar, with a slight alteration, formed part of the remarks, submitted by me to Lord Cornwallis in March 1789, on Mr. Law's plan of settlement, as noticed in the second volume of this analysis.* 'The zemindar (or *zumeendar*†) appears to be a landholder of a peculiar description, not definable by any single term in our language. A receiver of the territorial revenue of the State, from the ryots (more correctly written *ruyyuts*) and other under-tenants of land. Allowed to succeed to his zemindary by inheritance; yet in general required to take out a renewal of his title from the sovereign, or his representative, on payment of a *péshkush*, or fine of investiture, to the Emperor, and a *nuzrânah*, or present, to his provincial delegate, the Nazim. Permitted to transfer his zemindary by sale or gift, yet commonly expected to obtain previous special permission. Privileged to be generally the annual contractor for the public revenue receivable from his zemindary, yet set aside with a limited provision, in land or money, whenever it was the pleasure of Government to collect the rents by separate agency, or to assign them, temporarily or permanently, by the grant of a *jageer*, or *ultumgha.* Authorized, in Bengal, since the early part of the present century,‡ to apportion to the pergunahs, villages, and lesser divisions of land within his zemindary the *abwab*, or cesses, imposed by the soobadar, usually in some proportion to the standard assessment of the zemindary, established by Torunmul and others, yet subject to the discretionary interference of public authority, either to equalize the amount assessed on particular divisions, or to abolish what appeared oppressive to the ryot. Entitled to any contingent emoluments proceeding from his contract during the period of his agreement, yet bound by the terms of his tenure to deliver in a faithful account of his receipts. Responsible, by the same terms, for keeping the peace within his jurisdiction, but apparently allowed to apprehend only, and deliver over to a Mosulman magistrate for trial and punishment. This is, in abstract, my present idea of a zemindar under the Moghul constitution and practice.' I will now add, in concluding this imperfect statement of the discussions which have taken place relative to right of zemindars, that after the lapse of twenty-eight years since the above definition was given, I see no reason to alter it, as applicable to the principal zemindars of Bengal and Behar, before the conclusion of a permanent settlement with them for the land revenue of their respective zemindaries. Their situation, however, is materially altered by that important arrangement, particularly in their relation to the governing power, and as to what may be denominated the public interests or rights of Government in the lands of a zemindary estate. With reference to the power expressly reserved to the Governor General in Council by the Seventh Article of the Proclamation issued on the 23rd March 1793, and repeated in Section 8, Regulation I, 1793, *viz.*, that he 'will, whenever he may deem it proper, enact such regulations as he may think necessary for the protection and welfare of the dependent talookdars, ryots, and other cultivators of the soil;'§ to the principle declared in the preamble to Regulation XIX, 1793, that 'by the ancient law of the country the ruling power is entitled to a certain proportion of the produce of every begah of land (demandable in money or kind according to local custom), unless it transfer its right thereto, for a term or in perpetuity; or limit the public demand upon the whole of the lands belonging to an individual, leaving him to appropriate to his own use the difference between the value of such proportion

* Pages 192 and 239.

† The word is thus written according to Doctor Gilchrist's system of orthography. But the common mode of expressing it, which is also used in the regulation, corresponds with the system adopted by Sir W. Jones, accenting the long vowels, as *zemíndár.*

‡ The *Eighteenth* of the Christian Era.

§ See Vol. II, page 198.

of the produce and the sum payable to the public, whilst he continues to discharge the same; and to the large proportion of the rent of malgoozary lands (*viz.*, all lands subject to assessment) which is still paid into the public treasury, through the zemindars and other superior landholders, with whom or in behalf of whom the settlement has been concluded; such landholders may, perhaps, strictly and theoretically, be yet considered as receivers, not simply of a private land rent, but of the public land revenue or Government's portion of the land produce, from the cultivators and other under-tenants. As however the zemindar, talukdar, chowdhry, village malik, malik-mocuddum (or mocuddum having the rights of a malik) and generally every landholder, of whatever denomination, on whose estate the public demand has been limited by a fixed assessment, is now at liberty (in the terms above cited) *to appropriate to his own use the difference between the value of such proportion of the produce and the sum payable to the public;* as the amount of this difference (or *proprietor's share*, as it is designated by Colonel Wilks) is already computed to be, on an average, *treble* what it was before the establishment of a permanent assessment;† and as it may be expected to increase still more by the cultivation of waste lands, and other agricultural improvements, the landholders, whose estates are secured to them, and to their lawful successors in perpetuity, at their present assessment, may be not improperly recognised as *proprietors of land* in a general sense, such as that evidently intended by the regulations and public acts of Government; *viz.*, without prejudice to the rights of the ryots, and other under-tenants, of whatever description.‡ Moreover, the zemindars are no longer required to take out a sunnud, in ratification of their succession, or to pay *peshkush*, or *nuzranah*. Nor are they required to obtain any permission for the sale or gift of their estates; but are expressly declared at liberty, subject only to the legal provisions of the Hindoo or Mahummudan law, and the regulations in force, 'to transfer to whomsoever they may think proper, by sale, gift, or otherwise, the proprietary rights in the whole, or any portion of their respective estates, without applying to Government for its sanction.§' Neither are they subject to a temporary or permanent dispossession from the management of their zemindaries, whilst they continue to pay with punctuality the revenue assessed upon them. Being themselves exempt from any new *abwabs*, or cesses, by the soobadar, they are restricted from imposing any upon their ryots; and they are still, as heretofore, liable to the interposition of public authority, as far as may be just and necessary, to prevent oppressive exactions from their under-tenants, and secure the stipulated or prescriptive rights of the latter in their respective tenures. But consistently with the due maintenance of such rights (the possessors of which, whether dependent talookdars, istimrardars, khoodkasht or other privileged ryots, or generally of whatever denomination, if they have any right of occupancy to distinguish them from tenants-at-will, may be considered to hold talookdary, istimrary, or other dependent and inferior estates, within those of zemindars, independent talookdars, and other superior landholders), the zemindars are now allowed to enjoy whatever rents and profits may arise from the improvement of their estates, without rendering, or exhibiting, any accounts of their receipts and disbursements, except when such accounts are required for an allotment of the fixed assessment on divisions of estates, or for the adjustment of suits between landholders or farmers, and under-tenants, relative to demands or exactions of rent.‖ Lastly, the zemindars in Bengal and Behar are exonerated from the charge of the police and required only to co-operate with the police officers of Government in maintaining the peace within the limits of their respective estates, especially in giving punctual information of all heinous offences committed, and in discovering and assisting to apprehend the offenders.¶ A zemindar in the above provinces, as well as in other parts of the territory subject to this presidency, where the public assessment upon his zemindary has been permanently fixed and engaged for, may therefore be now defined, or described, in the following terms, *viz.*: A landholder, possessing a zemindary estate, which is hereditable and transferable by sale, gift, or bequest, subject under all circumstances to the public assessment fixed upon it; entitled

* Vol. II, page 486.

† See note on the first clause of Section 14, Regulation I, 1814, page 167, of the present volume. When the assessment was variable, malgoozary lands were seldom disposed of, either publicly or privately, for more than one year's jumma, which was reckoned equivalent to ten years' net profit. But they are now sold, under a fixed assessment, at an average price of three years' jumma, which has consequently been adopted in the regulations, as the valuation of malgoozary land, in the Lower Provinces and Benares.

‡ *Vide* proclamation before referred to in Vol. II, page 198. It may be further noticed in this place that it is expressly declared in the Seventh Clause of Section 15, Regulation VII, 1799, that proprietors and farmers of land "will be held responsible for all acts done by them, or by their agents, which may exceed their just powers, and infringe the rights of under-tenants of whatever description, whether founded on pottahs or other written deeds and engagements, or on long prescription and established local usage."

§ See Art. 8 of proclamation issued 22nd March 1793, Vol. II, page 200.

‖ See Vol. II, pages 166 and 462.

¶ Vol. I, page 510. The responsibility of the landholders and farmers of land, and their local agents, for giving information of crimes and of offenders to the Magistrates, or police officers, has been more fully provided for in Regulations VI, 1810; I, 1811; III, 1812; and VIII, 1814.

after payment of such assessment, to appropriate any surplus rents and profits which may be lawfully receivable by him from the under-tenants of land in his zemindary, or from the cultivation and improvement of untenanted lands, but subject nevertheless to such rules and restrictions as are already established, or may be hereafter enacted by the British Government, for securing the rights and privileges of ryots and other under-tenants, of whatever denomination, in their respective tenures; and for protecting them against undue exaction, or oppression. (*Pages 398—405.*)

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I shall conclude this section with the following observations and suggestions, relative to the ryots, which were written by me in the year 1789, when the rules connected with a decennial settlement of the land revenue were under consideration.

In determining the principle of a permanent settlement, the security and ease of the ryots are important objects of consideration, both because they constitute by far the greater part of the community, and because the whole revenue paid to Government is ultimately derived from their labours. In a final adjustment of the rights of the several classes of landholders, therefore, what rights actually belong to the ryots, and what rights should belong to them for their security and ease, are questions of the first consequence. In considering the former question, it must primarily be settled, what shall be deemed the standard of their rights? written institutions, or general usage? and if the latter, whether ancient, or modern. If the institutes of Akber be appealed to as the criterion, the regulations therein laid down for the encouragement of cultivation, the division of the crops, and the guidance of the amilgoozar, or collector of the revenues, will, I conceive, be deemed to render it probable, that the payment of the ryot was regulated and fixed, according to general rules of assessment, by the officers of Government, although it does not appear that he possessed the proprietary right of alienation. If the general belief of Toorun Mul's settlement having long ascertained the demand on the ryots, be well founded, an appeal to ancient usage will produce the same result. If the modern practice be referred to, it will, I believe, be found, that from the early part of the present century, the zemindars of Bengal have exercised a privilege of distributing the *soobahdary abwab*, on the ryots within their zemindaries, nominally in some proportion to the standard jumma, but really according to their own discretion; subject to the occasional interference of Government to equalize the assessment of particular divisions, or abolish what appeared oppressive; and with some exception to the *khoodkasht* ryots; who have, in many parts, enjoyed the privilege of holding the possession of their lands, even hereditarily, at a fixed rent; the right of disposing of them by sale, gift, or other mode of transfer, still continuing, under limitations, with the zemindar, or talookdar, exclusively. This province, however, having, during a great part of the latter period, been held independent of the regular Moghul government; the introduction of the *abwabs* appearing to have been an innovation; and the great want of uniformity, which has obtained, shewing that no established system has been adhered to; it may perhaps be thought that no inference can be drawn from modern practice, to invalidate the conclusions made from ancient usage, and written institutions. Yet it should, at the same time, be remembered, that the usage of seventy or eighty years has, in a manner, established a new code of common laws; and that the property of the present occupants of the lands, whatever it may be, has, with few exceptions, been acquired during this period. On the whole, therefore, I do not think, the ryots can *claim any right* of alienating the lands rented by them, by sale, or other mode of transfer; nor any *right* of holding them at a fixed rent, except in the particular instances of *khoodkasht* ryots, who, from prescription, have a privilege of keeping possession as long as they pay the rent stipulated for by them.

The second question, what rights *should belong* to the ryots, for their security and ease, it may be useful to consider separately, with regard to a right of property in the land, entitling them to alienate it by sale, or otherwise; and a right of holding the possession of it at a fixed rent.—*1st*, Should the ryots have a right of transferring the land rented by them, subject to the rent assessed on it? It appears to me this right would be advantageous to the ryots, by giving them a property available to supply their wants in time of distress; to make good their debts, when indebted; and to answer their convenience, when desirous of changing their occupation, or place of residence. I see no advantage that could arise from it to the zemindars except perhaps a greater punctuality in the receipt of their rents, from the additional value given to the property of their tenants; in which respect it might also prove advantageous to Government; as well as in forwarding the general ends of agriculture and commerce. Disadvantages there could be none to the ryot from it, to the zemindar there might be. The choice of his tenant is important to him. By the transfer he may lose men of substance and respon-

sibility, for men of a different character, and thereby be, at least, exposed to trouble, if not risk. The character of the purchaser may also be, in other respects, objectionable. With regard to Government, no disadvantage to be apprehended from it occurs to me. After weighing the above considerations, my opinion is, that were the ryots alone to be considered, the privilege of transferring the lands held by permanent occupants should be vested in them. But as the zemindars and talookdars also claim consideration, as their acknowledged rights would be infringed by conferring such privilege on the ryots; and as this infringement does not seem essentially necessary for the ease and security of the latter; the privilege in question should not, I think, be given to the ryots by the authority of Government; but allowed to be at any time voluntarily given, or sold, by the zemindars themselves.

2ndly. Should the permanent ryots hold possession of the lands rented to them, on condition of paying a fixed rent? To answer this question satisfactorily, I shall consider distinctly the reasons for and against the measure, with regard to the ryots, the zemindars, and Government respectively. Would it be beneficial to the ryots.

They would be secured from an increase of payment according to their improvements; which would probably stimulate them to improve the cultivation of their lands; and in that case, it may be presumed, the surplus produce, above the fixed rent, would yield them an easy livelihood, as well as enable them to lay by a provision against casualties. On the other hand, they would be subject to greater rigor from the zemindars in the adjustment of their rents, in the first instance, as well as in the subsequent payment of the amount adjusted, under whatever accidents might occur to create inability. The zemindars would be anxious to obtain as high a rent as possible, if aware that it could never be raised thereafter; and I fear it would be impossible to lay down a rule just to both parties. The zemindars, it may be said, are interested in satisfying the ryots, because the lands, if uncultivated, are unproductive to them: but, it may be answered, the ryots are also interested in satisfying the zemindars; because, if they cannot obtain lands to cultivate, they must starve. Both causes probably would operate; but, as the zemindars could more safely risk delay than the ryots, it is to be feared, the latter would in general be obliged to accede; and, if so, it becomes a question whether it would not be better to let the zemindars make a limited settlement with the ryots, on the moderate terms, which, it is probable, they would then be satisfied with than to require a perpetual settlement, on the immoderate terms, which, it seems probable, they would then require.

Would it be beneficial to the zemindars to fix the rent of the ryots in perpetuity? The ease of the ryots to be expected, if their rent be not too high, would enable them to pay with more punctuality. The certainty of the payment would induce the ryots to give a higher rent, than they would under a fluctuating demand. The ease of the cultivators of the soil would increase the demand for land; and consequently encourage the greater cultivation of the zemindar's waste lands. The ability of the ryots to provide against contingencies would lessen the losses to population, hitherto felt from famine; and consequently augment the number of cultivators for the waste lands. On the other hand, the fixed rent would prevent the zemindars from reaping any advantage from the improvement of the ryots; or from a rise in the value of any particular articles of produce; and should the rent be fixed too high, in any instance, the stated benefits would not be derived.

Lastly. Would the fixed assessment of the ryots be beneficial to Government? The demand being fixed, the ryots would be stimulated by self-interest to improve the cultivation to the utmost; and the general improvement of the cultivation would increase the resources of the country. The ryots, secured from exaction, might lay by the surplus produce of their labours for future contingencies; which would mitigate the dreadful effects of famine; and thereby preserve the population of the country. The ease of the ryots would, by enabling the zemindars to collect their rents with punctuality, assist the more punctual payment of their revenues to Government. The opposite arguments are—The natives of this country are by many supposed so much inclined to indolence, as to be induced to labour from absolute necessity only: and, if this supposition have any foundation, the operation of the principle, in whatever degree, would so far tend to counteract the extension of cultivation; as, by fixing the rent, such necessity would be diminished. That the operation of this principle would also tend to prevent a provision for futurity. That the impossibility of equalizing the assessment, according to the improved state of the lands, would render the rents of some, in course of time, considerably heavier than those of others, and thereby prevent equality; and finally, that a prohibition to the zemindars and talookdars to raise the rents of the ryots, would necessarily forbid any increase of the land assessment on the zemindars and talookdars, excepting such as could be derived from new cultivation.

On the whole, considering the Act of Parliament ordaining a general preservation of rights, the orders of the Court of Directors for a settlement of ten years; and the foregoing arguments, for and against the ryots, zemindars, and Government respectively, I am of opinion no perpetual right of possession, on condition of paying a fixed rent, should, at present, be conferred on those ryots, who have not already a declared or prescriptive title to such. In order, however, to obtain, as far as possible, the advantages of a fixed assessment of the ryots, and at the same time, to obviate the objections enumerated, it appears expedient to require the zemindars and talookdars to adjust, within the three first years of the ensuing decennial settlement, a rent to be paid by their ryots individually, which shall continue unalterable during the remaining seven years. The concurrence of the zemindars and talookdars might be obtained, by making their agreement thereto the condition of their own revenue continuing invariable during the same period: and this could afford a fair experiment of the effects to be expected from a fixed demand on the ryots; which would serve to assist a future decision on the important question, whether the land revenue of these provinces should be altered periodically, or fixed at once in perpetuity. (*Pages 458—463*)

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*IV.—Extracts from Fifth Report from the Select Committee on the affairs of the East India Company, Bengal Presidency, 1812.**

But though much good had been effected, much yet remained to be done, before the institutions of the Government and the condition of the people could be raised near enough to that standard, which might satisfy the enlarged views of such as had formed their opinions, on the principles and practice of European states; and accordingly, in the Session of 1781, the Parliament passed the Act of the 24th of his present Majesty, "for the better regulation and management of the affairs of the East India Company;" by the 39th section of which the East India Company was commanded "to inquire into the alleged grievances of the landholders, and if founded in truth to afford them redress, and to establish permanent rules for the settlement and collection of the revenue, and for the administration of justice, founded on the ancient laws and local usages of the country." Extract from the Report.

Your Committee will next proceed to state the measures which, in pursuance of the requisitions of Parliament, were adopted, to inquire into the condition of the landholders, with a view of redressing their alleged grievances, and to establish permanent rules for the internal Government of the provinces.

The person selected to superintend and direct these important measures was the late MARQUIS CORNWALLIS, who proceeded to India in 1786. His lordship was furnished with instructions from the Court of Directors, in a letter addressed to the Governor-General and Council, dated 12th April 1786. As a reference to this letter may account for many considerable alterations which have since been made in the system of the internal management of the Company's territorial possessions, and in particular for the introduction of a permanent settlement of the land-revenue, afterwards rendered perpetual, the Committee think it may be proper to notice such parts of it as relate especially to that measure, and to the code of regulations subsequently established. The disapprobation of the Court had been excited by the frequent changes which had marked the financial system of their Government in Bengal; and they expressed their preference of a steady adherence to almost any one system, attended with watchful superintendence. They censured the ineffectual attempts that had been made to increase the assessment of revenue, whereby the zemindars (or hereditary superintendents of the land) had been taxed, to make room for the introduction of farmers, sezawuls, and aumeens, who having no permanent interest in the lands, had drained the country of its resources. They disapproved the rule recently established, which prohibited the Collector from having any concern in the formation of the settlement of his district; and noticed the heavy arrears outstanding on the settlement of the last four years, which had been formed under the immediate direction of the Committee of revenue; and expressed their opinion that the most likely means of avoiding such defalcations in future would be by introducing a permanent settlement of a revenue, estimated in its amount on reasonable principles, for the due payment of which the hereditary tenure of the possessor would be the best, and in general the only necessary security. They therefore directed that the settlement should be made, in all practicable instances, with

Appendix 12 to 2nd Report of Select Committee, 1810.

* Edition of 1883, Higginbotham & Co., Madras.

the zemindar, and that in cases of his established incapacity for the trust a preference should be given to a relation or agent over a farmer. They apprehended the design of the legislature was to declare general principles of conduct; and not to introduce any novel system, or to destroy those rules and maxims of policy which prevailed in well regulated periods of the native Government. With respect to the amount of the assessment, the directors were of opinion, that the information already obtained might be sufficient to enable their Government in Bengal to fix it without having recourse to minute local scrutinies; and they suggested the average of former years' collections to be the guide on the present occasion; and on this point concluded their instructions with remarking, that "a moderate jumma, or assessment, regularly and punctually collected, unites the consideration of our interest with the happiness of the natives and security of the landholders more rationally than any imperfect collection of an exaggerated jumma, to be enforced with severity and vexation." Though the amount when determined, and on reference approved by themselves, the directors intended should be considered as the permanent and unalterable revenue of their territorial possessions in Bengal, yet for special reasons they desired that the present settlement might be concluded for the term of ten years only. In making choice of the persons with whom to conclude the settlement, they desired the clause of the Act, 1784, in favour of the landholders, might be attended to; and that in the point in question, as well as in every other particular, "the humane intention of the legislature towards the native landholders might be strictly fulfilled." With a view to the greater precision in effecting these objects, they recommended that it might, as far as possible, be ascertained what were the rights and privileges of the zemindars and other landholders, under the institutions of the Mogul or the Hindoo Government, and the services they were bound to perform. (*Pages 13—15.*)

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On the arrival in India of Lord Cornwallis with the foregoing orders, it was not found that the Government possessed information sufficient to enable his lordship to proceed, at once, to so important a step as the conclusion of a settlement of land-revenue, for a period of ten years, with a view to perpetuity, constituting, as it did, the principal financial resource of Government. Much was yet to be ascertained with respect to the ancient laws and local usages of the country; the nature of the land-tenure was yet imperfectly understood; and the relative situation and condition of the natives concerned in the production of the revenue had not been fully explained. These several points it was necessary should be enquired into before decisive measures could be taken for fulfilling the intention of the legislature, and the orders of the directors, by establishing permanent regulations of internal policy. His lordship therefore determined to continue for a time the practice of annual settlements for the different districts, through the agency of the Collectors, superintended by the revenue Committee, while interrogatories were issued to the most experienced of the civil servants, and other practicable means resorted to, by which requisite information might be obtained. (*Page 15.*)

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In the extensive plains of India a large proportion, estimated in the Company's provinces at one-third by Lord Cornwallis, at one-half by others, and by some at two-thirds of land capable of cultivation lies waste, and probably was never otherwise. It became therefore of importance to the native Governments, whose principal financial resource was the land-revenue, to provide that as the population and cultivation should increase the State might derive its proportion of advantage resulting from this progressive augmentation. Whatever might be the motive of its introduction, the rule for fixing the Government share of the crop had this tendency. This rule is traceable as a general principle through every part of the empire which has yet come under the British dominion, and undoubtedly had its origin in times anterior to the entry of the Mahomedans into India. By this rule the produce of the land, whether taken in kind, or estimated in money, was understood to be shared, in distinct proportions, between the cultivator and the Government. The shares varied when the land was recently cleared and required extraordinary labour, but when it was fully settled and productive, the cultivator had about two-fifths, and the Government the remainder. The Government share was again divided with the zemindar and the village officers, in such proportion that the zemindar retained no more than about one-tenth of this share, or little more than three-fiftieth parts of the whole; but in instances of meritorious conduct the deficiency was made up to him by special grants of land, denominated *nauncaur* (or subsistence) The small portions which remained were divided between the *mokuddim* or head cultivator of the village, who was either supposed instrumental in originally settling the village, or derived his right by inheritance or by purchase from that transaction; and had still the charge of promoting and directing its cultivation; *pausban* or *gorayat*, whose duty it was to guard the crop, and the *putwarry* or

village accountant, perhaps the only inhabitant who could write, and on whom the cultivators relied for an adjustment of their demands and payments to be made on account of their rents. Besides these persons, who from the zemindars downwards, can be regarded in no other light than as servants of the Government, provision was made, either by an allotted share of the produce, or by a special grant of land, for the *canongoe*, or confidential agent of the Government, whose name implies that he was the depositary and promulgator of the established regulations, and whose office was intended as a check on the conduct, in financial transactions, of all the rest. Under the superintendence of this officer, or of one of his *gomastahs* or appointed agents, were placed a certain number of adjacent villages, the accounts of which as kept by the putwarries were constantly open to his inspection, and the transactions in which, with regard to the occupancy of the land, and the distinction of boundaries, came regularly under his cognizance, in a form that enabled him at any time, when called upon, to report to the Government the quantity of land in cultivation, the nature of the produce, the amount of rent paid, and generally the disposal of the produce, agreeably to the shares allotted by the rules as above explained. To his office moreover reference might be had to determine contested boundaries, the use of rivers or reservoirs for irrigation, and generally in all disputes concerning permanent property or local usage within the limits of his official range. Your Committee have been more particular in describing the office of the *canongoe*, because they find, that although prescribed and abolished (perhaps precipitately) as pernicious in Bengal and Behar, after the conclusion of the permanent settlement of the land-revenue, the same office in the ceded and conquered districts, and in the province of Benares, has more recently been pronounced "of great utility, and calculated to render much public benefit;" and the several officers found there continued in the exercise of their functions. A certain number of villages, with a society thus organized, formed a pergunnah; a certain number of these, comprehending a tract of country equal perhaps to a moderate sized English country, was denominated a chuckla. Of these, a certain number and extent formed a Circar, and a few of these formed the last or grand division, styled a soobah; of which, by the Dewanny grant, the British Government had obtained two, the soobah of Bengal and that of Behar with part of Orissa.

Letter from the Collector of Bauglepore, on the constitution and duties of the Canongoe's Office, dated 6th December 1787.
Appendix No. 3.
Regulation VI of 1808.

From this concise representation of what appears to have been the provincial organization of the Revenue Department, your Committee think it may appear that when the Moghul Government was in its vigour, if it be supposed that the different offices from the highest downwards were at any time judiciously filled and faithfully discharged, the rents of the lands might have been collected from the cultivator without oppression; and the different shares of the produce distributed by the rules described, under a just observance of the rights of the parties concerned; but as this was scarcely to be expected throughout so extensive an empire, more especially when in its decline, when exaction on the one part, and concealment and evasion on the other, were likely to be practised, the *khas* collection, or collection immediately by Government, was only occasionally and in particular instances resorted to. In practice it was more usual to have recourse to the zemindary settlement, or to a species of farming system, by the appointment of an aumil or superintendent, who in designation was no more than an agent, but in practice was often required to engage for the production of a certain amount of revenue.

To make the settlement which might be for a term of years, but which was commonly annual, the subadar or dewan of the empire either proceeded into the provinces, or summoned the landholders to his presence. If they agreed to the amount proposed the settlement was made with them; if not, it was open to a farmer or aumil, who could tender security, if required, for the discharge of his engagements, which included not only the amount of revenue to be paid to the Government, but also the due distribution of the allotted shares to the zemindar and the inferior village officers as before enumerated. The profit to the farmer was supposed to be derived principally from the means which he might possess of extending the cultivation, and the zemindar, besides his established share of the produce, had when the settlement was made with him the same advantage. In both cases this was probably the smallest part of the advantages they really derived, more especially, if situated beyond the reach of control.

On the same principle that the canongoes and village accountants were stationed in the province a head canongoe and superintendent of the treasury was stationed with the subadar, whence were forwarded the annual revenue accounts to the seat of empire, and whence might at any time proceed orders or forms of reports to the provincial canongoes and accountants for the minutest particulars relative to the actual state or produce of any one or all of the different villages contained within the limits of the province over which the subadar presided.

Sufficient traces remained to shew what was the original state of these institutions in Behar; but in Bengal the disorders which increased as the Mogul empire declined had

destroyed the efficacy of those checks, which had enabled the governing power to acquire an accurate account of the village collections. The office of the canongoe was become little more than a name, and no better mode appeared for gaining knowledge of the value of the lands than could be obtained by a comparison of different years' collections, or by reference to village accounts, which were liable to fabrication. The difficulty was increased by a difference which had originally prevailed in the mode of forming the assessment in Bengal from what has been described as the practice in Behar. In Bengal, instead of a division of the crop, or of the estimated value of it, in the current coin, the whole amount payable by the individual cultivator was consolidated into one sum, called the *assul* or original rent, and provision made for the zemindar, the village accountant, the mundul, and the other inferior officers, by other means than by a division of the zemindary portion of the produce. This was effected either by grants of land, or by the privilege of cultivating on lower terms than the rest of the inhabitants, and partly in money, a mode which, as it afforded the officers of Government no interest in the accuracy of the village accounts, rendered the fabrication or concealment of them the more feasible. It moreover placed the zemindar in a condition more consistent with European notions of proprietary right in the soil than could be inferred from his portion of the produce, shared with the officers of Government; and was, perhaps, the foundation of much of that difference of opinion which appeared in the official discussions on that topic under the Supreme Government at this time.

Under this view of the Mogul system as it formerly existed, and of the state into which it had fallen, it was by some suggested as advisable for the Company to leave open the means of participation in the advantages expected to result from increased population and general prosperity, which might reasonably be counted on, under the British Government, by continuing the practice of periodical settlements of the land-revenue under the checks instituted by the Mogul authority. These, it was contended when brought back to their original state of utility, and improved by such regulations as might be superadded by the British Government, would, under a just and vigilant administration, unite the liberal policy of an European Estate with the strength and energy of an Asiatic monarchy, and be altogether better suited to the genius, experience and understanding of the natives than institutions founded on principles to them wholly new, derived from a state of society with which they were unacquainted, and the ultimate views of which they were not able to comprehend. But the leading members of the Supreme Government appear to have been, at an early period of the transactions now commencing, impressed with a strong persuasion of the proprietary right in the soil possessed by the zemindars, or if the right could not be made out consistently with the institutions of the former Government, that reason and humanity irresistibly urged the introduction of it. In the decision of this question was contemplated the introduction of a new order of things, which should have for its foundation the security of individual property, and the administration of justice, criminal and civil, by rules which were to disregard all conditions of persons, and in their operation be free of influence or control from the Government itself. The whole might be reconciled to a strict observance of the orders from home, which appeared to disclaim all views of an increasing land revenue, requiring only that the amount, at whatever it might now be fixed, should not be liable to fluctuation or defalcation, as it before had been, and that the rules for the collection of it should be permanent. If any deviations from the established usages of the natives should occur in what was intended to be done, the advantage was still so entirely on their side, particularly in regard to the landholder, that it was presumed they would at once sufficiently perceive the benefit intended, and not object to it because the mode of introducing it was new, nor regret the abolition of practices injurious to them on account of these having been of long standing. Thus, although the intention of the Government must have been manifest from the outset, a discussion of the principal points on which the new system depended was invited, and free discussion allowed by the Government to its officers, whose sentiments, as derived from local experience, might suggest the best means of carrying into effect the intended measures.

Though the servants of the Company had possessed the Dewanny authority over these provinces more than 26 years, and especial enquiries had at different times been prosecuted into the state of the revenues, and the condition of the inhabitants, yet much uncertainty still remained, in regard to the rights and usages of the different orders of people connected with the revenues. But the ability and experience of the author of the Minute, which has been referred to, appears to have supplied what was wanting, and to have enabled the Government to proceed without delay to the formation of a settlement of the land-revenue, for a period of ten years, and to publish general orders and instructions for the direction of the Collectors of the different districts of Bengal, in pursuance of the orders from home, towards the end of the year 1789, and similar orders for the province of Behar in the year following; but owing to

unexpected obstacles, and new circumstances that arose in the course of these arrangements, it was not before November 1791 that an amended and complete code of regulations for this purpose was prepared and promulgated by the Government, nor till the year 1793 that the decennial settlement was declared to be concluded in every district.

As the conclusion of the decennial settlement has led to one of the most important measures ever adopted by the East India Company, both in reference to themselves by fixing the amount of their land-revenue in perpetuity, and to the landholders in establishing and conveying to them rights hitherto unknown and unenjoyed in that country, your Committee think the House may expect from them a particular account of the nature of this settlement.

The first point proposed in the interrogatories circulated by Government was intended to determine the person with whom the settlement should be made, and here no difficulty occurred; for, whatever might be the difference of opinion among those who were officially consulted on the theoretical question of proprietary right in the soil, a general concurrence prevailed in favor of the settlement being made with the zemindar, in all practical instances, where no disqualification from minority, sex, or notorious profligacy of character presented objections. In such cases provision was made for vesting the estate in trust for the possessor; and in instances of the zemindar refusing to accede to the amount of the rent required the estate was to be farmed, and a provision similar to the zemindary share, which has been described, provided for his maintenance. (*Pages 18—22.*)

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In the progress and conclusion of this important transaction the Government appeared willing to recognize the proprietary right of the zemindars in the land, not so much from any proof of the existence of such right, discernible in his relative situation under the Mogul Government in its best form, as from the desire of improving their condition under the British Government as far as it might be done consistently with the permanency of the revenue and with the rights of the cultivators of the soil. The instructions from home had warned the Government against the danger of delusive theories, and the recent enquiries had disclosed a series of rights and privileges, and usages, admitted in the practice of the native Government, from the principal zemindar down to the actual labourer in husbandry, which it was necessary should be attended to before the zemindar could be left to the uncontrolled management of his estate. The *talookdar*, the *chowdry*, the *mundal*, the *mokuddim* had each his distinct right admitted under the native Government. Although they might be subject to exaction and oppression of various kinds, yet their rights, under the existing mechanism of a malguzarry or assessed village, did not appear liable to be called in question, and these were sufficiently distinguishable; but the case with regard to the lower and more numerous class of the natives (the cultivators or ryots) was more multifarious and intricate, particularly in the Bengal province, where the village records, from the neglect of the canongoe's office, could no longer be relied on, and where the practice of granting *puttahs* or leases had fallen into irregularity and confusion, and in some places almost into disuse from the same cause. The necessity which hence arose of leaving many of these points unsettled when the engagements were concluded with the zemindars created a doubt of the expediency of rendering those engagements irrevocable before it could be experimentally ascertained whether the different objects which led to their introduction were attainable under them. The fear of confirming, under a perpetual settlement, abuses which might not have yet come to light, or, if discovered, were not of a nature to be at once obviated, seems to have suggested a trial of the decennial settlement through the whole or even a part of the term engaged for before any assurance should be afforded the zemindars that their assessments were to be fixed for ever. The objections arising on these grounds against any intimation being given to the landholders of an intention to render their settlements permanent and irrevocable, without a previous reference to the Court of Directors, are ably urged in the proceedings of the Supreme Government at this period, and were replied to by the Governor-General, in a Minute dated 3rd February 1790, which proved satisfactory to the directors. At the present time, when your Committee are informed that settlements of the same nature are in progress in the recently acquired territorial possessions of the East India Company, your Committee are of opinion that the Minutes recorded on the above occasion should be printed for the information of the House, and they accordingly are to be found in the Appendix.

Appendix No. 5.

From the proceedings alluded to, it appears to have been determined by the Governor-General in Council that the notification in question should immediately be made to the zemindars; that if approved by the directors, to whose decision the point was to be referred, the settlements which had just been concluded should be rendered perpetual, or be fixed for ever.

Appendix 12 (A) to 2nd Report of Select Committee, 1810.

The directors in their reply (dated 19th September 1792) to the reference which was made to them on the progress of the settlement, and to the proposal of rendering it perpetual, expressed themselves in high terms of approbation of what had been done; and of assent in regard to what was further proposed to be accomplished. They seemed to consider a settlement of the rents in perpetuity, not as a claim to which the landholders had any pretensions, founded on the principles or practice of the native Government, but a grace which it would be good policy for the British Government to bestow upon them. In regard to proprietary right to the land, the recent enquiries had not established the zemindar on the footing of the owner of a landed estate in Europe, who may lease out portions, and employ and dismiss labourers at pleasure; but on the contrary had exhibited, from him down to the actual cultivator, other inferior landholders, styled talookdars and cultivators of different descriptions, whose claim to protection the Government readily recognized, but whose rights were not, under the principles of the present system, so easily reconcileable as to be at once susceptible of reduction to the rules about to be established in perpetuity. These the directors particularly recommended to the consideration of the Government, who in establishing permanent rules were to leave an opening for the introduction of any such in future, as from time to time might be found necessary, to prevent the ryots being improperly disturbed in their possessions, or subjected to unwarrantable exactions. This, the directors observed, would be clearly consistent with the true practice of the Mogul Government, under which it was a general maxim that the immediate cultivator of the soil duly paying his rent should not be dispossessed of the land he occupied; "and this" (they further observed) "necessarily supposes that there were some limits by which the rent could be defined, and that it was not left to the arbitrary determination of the zemindar, for otherwise such a rule would be nugatory, and in point of fact the original amount seems to have been anciently ascertained and fixed by an act of the sovereign." Subsequent enquiries, particularly in the Deccan and more southern part of India, have confirmed these observations. The division of the crop or produce taken in money or in kind, fixes and limits this demand, and as long as the ancient rules were scrupulously observed, the state and its subjects derived a mutual advantage from the increase of cultivation, while the *rate* of taxation remained fixed and invariable. Notwithstanding the foregoing reservations, the advantage actually to be conferred, in rendering the amount of revenue, which the landholders had recently entered into voluntary engagements to pay, perpetual or fixed for ever, and thereby securing them from any further demand of rent or tribute, or of any arbitrary exaction whatsoever, was so new, so unexpected, and of such inestimable value to the landholders as led the directors to believe would induce them assiduously to employ themselves in improving their estates, and on the other hand would place the security of the public revenue on a solid basis, founded on the growing prosperity of the country. (*Pages 23—25.*)

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It must have appeared, from what has been stated, that the inhabitants of the Company's territorial possessions, whose condition was considered to be the most improved by the introduction of the new system, were the class of landholders or zemindars. Under the native Government, the zemindars were liable to an annual requisition for such an amount of revenue or tribute, as a minute local scrutiny of the village accounts, aided by a measurement of the land if necessary, might warrant, leaving them simply their *russoom* or established proportion of the produce, and their *nauncaur* or special grant of land, where such existed, joined with the advantage derivable from an extension of cultivation, or what might be obtained by re-letting the land in parcels to under-renters as a compensation for the trouble and risk of the charge; and subject to imprisonment, corporal punishment, and dispossession in case of failure in the performance of their engagements. If they declined entering into engagements on the plea of excessive demand, they were restricted to their allowance of russoom or nauncaur, while the land was liable to be farmed or committed to the immediate management of an officer of Government. By the terms of the perpetual settlement, no farther demand is to be made upon the landholder, whatever may be the augmentation of his resources, by increased cultivation, or any other means, than the amount of the jumma or revenue which he has already voluntarily engaged to pay. On the other hand, he is declared not entitled to remissions, on the plea of loss from unfavourable seasons, inundation, or any other natural calamity; and, in the event of his falling in arrear of the regular payment of the revenue, his land is liable to be sold in liquidation of the balance outstanding.

Thus far the present tenure and condition of zemindar may appear similar to that of a freeholder in this country; but in India, as already has been mentioned, subordinate rights were found to exist which justice and humanity required should be protected before the privileges of the zemindars, under the new system, were declared fixed for ever. These were the

rights of the talookdars, or inferior zemindars, and of the ryots or cultivators. The former were of different descriptions, some of them, already entitled to separation from the zemindar's authority, or to make engagements with and pay their revenue directly, to the ruling power; others, by former custom, were dependant on the zemindar as on a liege lord. (*Page 33.*)

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Regulation VIII, 1793.

With respect to the cultivators or ryots, their rights and customs varied so much in different parts of the country, and appeared to the Government to involve so much intricacy, that the regulation only provides generally for engagements being entered into, and pottahs or leases being granted by the zemindars, leaving the terms to be such as shall appear to have been customary, or as shall be particularly adjusted between the parties; and in this it is probable that the intentions and expectations of the Government have been fulfilled, as no new regulation yet appears, altering or rescinding the one alluded to. It is moreover to be expected, that the parties, on experiencing the inconvenience, expense and delay, combined with the uncertainty attendant on decisions in the newly constituted Courts of Justice, will come to a reasonable agreement between themselves, the zemindars for the sake of retaining the cultivator, by whose means alone his estate can be rendered productive, and the cultivator for the sake of gaining a subsistence on the spot where he has been accustomed to reside. (*Pages 34 & 35.*)

V.—Extract from Fifth Report of the Select Committee Vol II (1812) on the Madras Presidency.

It would be superfluous, in your Committee, to enter into any circumstantial explanations of the different rules and provisions, relative to the new system of revenue, which has been introduced into the above-mentioned territories, and some other districts under the Government of Fort St. George; or of the nature of those rights, which it has either created or confirmed, whether affecting the Government, the zemindars, or the ryots; as they are fundamentally and substantially the same in principle as those which have been described to exist, under the land-revenue system of the Bengal provinces. Referring the House, therefore, for general information on that head, to the instructions issued to the Collectors in the year 1799, as containing a practical application of the principles according to which the arrangement was progressively adopted, your Committee deem it sufficient here to state, that the zemindars are declared to be the proprietors of the soil, both waste and cultivated, within the limits of their respective zemindaries; and the ryots or cultivators, their tenants or under-farmers, holding their fields from year to year under pottahs or leases, which specify the rent they are to pay to the zemindar, or the share of the crop he is to receive, who is prohibited, under penalties enforced by the Courts of Justice, from demanding more than the ryots paid or accounted for, at the time of concluding the Permanent Settlement, or than is agreeable to custom. Of the revenues or share of the crop received by the zemindar from the ryots, which was calculated to be about one-half the gross produce, he stipulated to pay to the Government, as jumma or rent, about two-thirds, retaining for his own use the remaining one-third, or about 15 per cent. of the gross produce. On the failure of a zemindar in his payments to Government, which he is required to make by periodical instalments, his lands become liable to attachment, and, if necessary, to be sold, in order to realize the deficiency; or, more correctly speaking, such a portion of his interest in the soil which, as it has been stated, consists of his 15 per cent. of the gross produce, more or less, and the waste lands, are disposed of at public auction and the proceeds applied to the liquidation of the balance outstanding against him. In the case of the failure of a ryot in his payments or dues to the zemindar, his personal property is liable to be distrained by the latter; and if not sufficient to make good the arrear of rent, he can be ousted from the occupancy of the land cultivated by him; and the zemindar is at liberty to put another ryot into the possession of it, on the usual terms. The proprietary right of the zemindar, as it is termed, does not give him the power of selling the land of his zemindary, any more than the Government is empowered to sell any part of it, when he fails in the discharge of its demand upon him. He can only dispose of his interest in the soil, *viz.*, his 15 per cent. of the gross produce, and the waste land; which he can also, on the principle of a proprietary right in both, bequeath, mortgage, or alienate. (*Pages 55 & 56.*)

Circular Instructions to Collectors, dated 15th October 1799. Appendix No. 18.

VI.—Extracts from Minutes of Lord Cornwallis and John Shore (Vol. I of the Fifth Report.)

Extracts from Mr. Shore's Minute of June 1789, respecting Permanent Settlement of Lands in Bengal. Appended to the Fifth Report.)

Para. 11. Tury Mull is supposed to have formed his settlement of Bengal called the *Tumar Juma* by collecting, through the medium of the canongoes and other inferior officers, the accounts of the rents paid by the ryots, which served as the basis of it. The constituent parts of the assessment were called *Tukseem*, and comprehended not only the quota of the greater territorial divisions, but of the villages, and, as it is generally believed, of the individual ryots; to avoid ambiguity I shall invariably use the term of standard assessment whenever I speak of the *Tumar Juma* as established originally by Tury Mull, and subsequently augmented by the nazims. (*Page 103.*)

Para. 30. The principles of Mogul taxation, as far as we can collect from the institutes of Timur and Akber, from the ordinations of the emperors, and the conduct of their delegates, however limited in practice, were calculated to give the sovereign a proportion of the advantages arising from extended cultivation and increased population. As these were discovered, the tumar or standard assessment was augmented; and whatever the justice or policy of the principle might be, the practice in detail has this merit, that it was founded upon a knowledge of real and existing resources.

31. In conformity to these principles, inferior officers were stationed throughout the country to note and register all transactions relating to the soil, its rents, and its produce, every augmentation of cultivation was required to be recorded, as well as every diminution in its quantity.

32. An increase of revenue exacted from a zemindar under these circumstances affected his profits, but made no alteration in the rates upon the ryots; he paid a portion of the rents arising from discovered improvements in his lands; but the cultivators of the soil were not by this demand exposed to an enhancement of their rates. The excess claimed augmented the tumar or standard assessment, which by the investigations of Jaffier Khan was raised in the sum of Rs. 11,72,279.

33. But the abwab subahdarry or viceroyal imposts, which constitute the increase since 1728, had a contrary tendency, for they enhanced the rates. They were in general levied upon the standard assessment in certain proportions to its amount, and the zemindars who paid them were authorized to collect them from their ryots in the same proportions to their respective quotas of rent. Thus the tax known by the denomination of serf sicca raised the rates of taxation and rent, nine rupees six annas per cent. Where the proportions were not ascertained the demand was in fact discretional, and though meant in some cases to have a partial operation was often extended by the inferior officers to situations where it was unclaimed by Government. (*Pages 106 & 107.*)

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Para. 63. In this review of the settlement of Bengal, I have not thought it necessary to notice particularly the assessment of Sultan Sujah in 1658. From the era of Tury Mull in 1582 until Jaffier Khan in 1728, the increase was moderate; from that period to the close of Aliverdi's administration in 1755 it was rapid, but not perhaps excessive; in 1763 it was violent and exorbitant.

64. My objections to the principal of the Soubahdarry imposts have a reference to the circumstances under which they were established. If the rates in the tukseem of Tury Mull with respect to the ryots had not been previously augmented by impositions separate and distinct from those of the soubahs, perhaps the best possible mode of obtaining an increase would have been by demanding it in certain proportions to that standard, with a due regard to the degree of improvement in the country. But the fact was otherwise; and these demands upon the zemindars confirmed and perpetuated their impositions upon the ryots, antecedently levied for their own subsistence and emolument, whilst it opened a door for future unbounded exactions.

65. There is no proof in Mr. Grant's analysis, as far as I can discover, that a fixed proportion of the produce was ever formally or virtually assigned to the zemindars of Bengal for their subsistence. The allowed deductions under the general term of *muzoonet* were applied to a variety of disbursements, and that portion of it which the zemindars received under the denomination of *nankar* or russoom zemindary was seldom sufficient for their maintenance, with the strictest attention to economy. But a variety of information tends to prove that at the period of Aliverdi Khan's administration the circumstances of the zemindars were in general affluent. This affluence could only have arisen under a moderate assessment, in which the interest of the zemindars were consulted, and by an economical management on their parts. The principle that proposed to reduce them to poverty was certainly unwise; but as we know not what was meant to be left to the zemindars, we cannot judge with certainty of its effect; in practice, we may in general conclude that it had a tendency to depress zeal and annihilate industry, and with moral certainty affirm that a system which professes to destroy all the rewards of intermediate agency is not only unjust in itself but impracticable in the execution. How

far the Soubahdarry imposts, including all that were imposed to the year 1756, operated to accomplish this object cannot be now precisely ascertained. I am willing to suppose that the zemindars had still something left to themselves; if they had not, it is clear that they would exact it. (*Page 112.*)

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Para. 145. I believe that the ryots in Bengal are generally taxed in a proportion of one-half of the produce of their labour, and we must therefore admit that the assessment with respect to them is full, as much as it ought to be, supposing it even to be one-third; that it is so seems the general opinion, whether the stated proportion be just or not; we also know from observation and experience that the mode of living amongst the zemindars is neither ostentatious nor expensive, and that the proportion of the collections left to them does not exceed one-tenth of their amount; and as we have the clearest evidence that they are in general needy and embarrassed with debt, we may without hesitation pronounce that their profits are not immoderate.

146. Amongst these conclusions it may be stated that much collusion exists in the collection of the rents and revenues, and that it is practised both by the ryots and zemindars as well as by the intermediate classes, and more particularly by the head ryots or munduls. But from what I can collect upon this subject, by my own enquiries and from the reports of the Collectors, I should rather suppose that the detection of these abuses would prove of advantage towards the equalization of the demands for rent than productive of any considerable increase, the practicability or amount of which is not within the bounds of conjecture. (*Page 126.*)

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Para. 216. The rent of the land, through whatever channels it passes into the public treasury, is paid originally by the ryots, or the immediate cultivators of the soil. Their situation, not only on this account, but as being the most helpless and exposed to oppressions, ought naturally to attract the attention and engage the interest of the ruling power.

217. By the institutes of Akber we are informed that when from motives of justice and humanity the emperor ordered a settlement of the country to be made for ten years, he began by directing a measurement of the lands and by fixing the rates of them, according to their qualities and produce. The proportion which he claimed for the State was one-third of the medium produce.

218. Whether this operation extended to Bengal I know not; Tury Mull is supposed to have fixed the rent payable by the ryots, but by what rules he settled it we are not certainly informed. The assul jumma established by him does not now anywhere exist.

219. At present no uniformity whatever is observed in the demands upon the ryots. The rates not only vary in the different Collectorships, but the pergunnahs composing them, in the villages and in the lands of the same village, and the total exacted far exceeds the rates of Tury Mull.

220. Where these variations take place by any established rules founded on the quality of the soil, its produce, and the uses to which the land is applied, however perplexing they may be to the Collector, or the other officers of Government, I do not deem them of material inconvenience to the ryots, who from usage understand them, and can tell when they are exposed to exactions. But the standard is often so indeterminate that the ryots neither know what they have to pay, nor can the officers of Government, without the most difficult investigation, ascertain whether they have been imposed upon or not.

221. Of all subjects relating to the revenues this, though the most important, is at the same time the most difficult to explain. I distrust my own knowledge upon it, and still more my ability to render it intelligible. I shall not, therefore, in this place enter into all the detail that it admits, but confine myself to a few general principles of practice only.

222. There are two fundamental distinctions in the tenures of the ryots, into which almost all the variations might be resolved; the first, when the rents are calculated upon an assul, or original rate, with an addition of the cesses subsequently imposed.

223. The imposition of these cesses is generally discretional; they differ in names, numbers and amount throughout the country; their rates are variously regulated at so much per rupee, or according to the number of months and by other distinctions. The proportion of each is not calculated upon the assul only; but generally upon the aggregate of that and the preceding cesses, and so on progressively.

224. The second is, where a fixed sum is paid for a specific quantity of land, at so much per bega without any other distinction. The rate, in the first instance, may be settled with a due regard to the quantity of the land and its produce. The ryots holding under this form are compelled to stand to all losses, to pay for the land, whether cultivated or not, and no security against demand but desertion.

225. There are two other distinctions of importance also with respect to the right of the ryots. Those who cultivate the lands of the village to which they belong, either from length of occupancy or other cause, have a stronger right than others, and may, in some measure, be considered as hereditary tenants, and they generally pay the highest rents. The other class cultivate lands belonging to a village where they do not reside; they are considered as tenants at will, and, having only a temporary accidental interest in the soil which they cultivate, will not submit to the payment of so large a rent as the preceding class, and when oppressed easily abandon the land to which they have no attachment.

226. In general, throughout Bengal, the rents are paid by the ryots in money; but in some places the produce is divided in different proportions between the cultivator and zemindar. This custom chiefly respects lands under the denomination of Khamar.

227. A ryot pays his rent either by a formal or implied agreement.

228. The first is a deed, called a pottah, which ought to express the nature and terms of his tenure, and the amount of his rent; it often however refers some of the conditions to indefinite rules, such as the custom of the village, or the pergunnah, the rates of an elapsed year, or the rent of his predecessor.

229. The terms of an implied agreement are sometimes specific, as in Chittagong, where the rents are paid from year to year, according to rates established upon a measurement of the lands in the year 1767; or indefinite, as having a reference to the rates of the last and preceding year, as in Nuddea.

230. In some places, as in the northern parts of the Dacca district, the collections are made by a hustabood, or measurement of the land held by each renter, immediately previous to the harvest, agreeable to which the lands are valued and rents received.

231. It would be endless to attempt the subordinate variations in the tenures or conditions of the ryots. It is evident that in a country where discretion has so long been the measure of exaction, where the qualities of the soil and the nature of the produce suggest the rates of the rents, where the standard of measuring the land varies, and where endless and often contradictory customs subsist in the same district and village, the task must be nearly impossible. The Collector of Rajshahy observes upon this subject, "that the infinitive varieties of soil and the further variations of value, from local circumstances, are absolutely beyond the investigation or almost comprehension, not merely of a Collector, but of any man who has not made it the business of his life."

232. The distinctions above pointed out have a reference to some rule; but the abuses that subsist are great, and more important to be known: amongst these the following may be enumerated.

233. *First.*—The arbitrary impositions of the zemindars, farmers, and others, to which the ryots are subject, which are generally measured by their supposed ability to pay them. The pretences for these impositions are various; the death of a zemindar, the birth of a son, any increase by Government upon the zemindar, are some amongst the number. A stipulation is sometimes exacted, and without ceremony given, that these taxes shall terminate with the year; but they are seldom relinquished without the substitution of others to an equivalent amount.

234. *Second.*—The want of formal engagements between the renters and the ryots. This is a very general complaint, as it renders it almost impossible to detect exactions.

235. *Third.*—The inequality of the assessment, to the advantage of the superior, and to the great injury of the inferior ryots, established by the influence or impositions of the former.

236. *Fourth.*—The indefinite terms of the pottahs in some places, which neither specify the quantity nor the quality of the land, or rate of payment.

237. *Fifth.*—The arbitrary custom of levying the deficiency, occasioned by failures in some parts of a district, upon the other ryots.

238. *Sixth.*—The continual breach of engagements with the ryots on the part of the zemindars or landlords and renters.

239. *Seventh.*—The want of regular discharges to the ryots for the rents which they pay.

240. On the other hand, the ryots derive the advantages, even from abuses. The want of engagements, or of precision in the terms of them, affords them opportunities of imposing upon the landlords; artifice is opposed to exaction, and often with success. They cultivate lands of which there is no account, and hold them in greater quantities than they engage for; hence they are unable to pay rents and cesses which appear extortionate; they hold lands at reduced rates by collusion; obtain grants of land fit for immediate cultivation, on the reduced terms of waste land, and by management with a renter at the close of a lease, procure fictitious pottahs, and accounts to be made out, with a view to defraud his successor.

241. It has been found that the ryots of a district have shown an aversion to receive pottahs, which ought to secure them against exaction, and this disinclination has been accounted

for in their apprehensions that the rates of their payments being reduced to a fixed amount, this would become a basis of future imposition: but admitting this to have its weight the objection may be also traced to other sources in the preceding explanations. The Collector of Rajshahy informs us "that he fears the ryots would hear of the introduction of new pottahs with an apprehension that no explanation could remove." (*Pages 139—142.*)

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Para. 264. We have admitted the property in the soil to be vested in the zemindars; and although it should be proved, under the Mogul system, to have belonged to the sovereign, which I deem impossible, the Company ought, in my opinion, to relinquish it. The mere admission of the right, unless followed by the measures that will give value to it, will operate but little towards the improvement of the country. The demands of a foreign dominion like ours ought certainly to be more moderate than the impositions of the native rulers; and to render the value of what we possess permanent our demands ought to be fixed. Removed from the control of our own Government the distance of half the globe, every practicable restriction should be imposed upon the administration in India, without circumscribing its necessary power; and the property of the inhabitants be secured against the fluctuations of caprice, or the license of unrestrained control.

265. Those who have perused the preceding observations with attention will not be surprized when I express a regret at finding so many objections occur against any devisable mode for managing and collecting the revenues of the country. The plainest, most natural, and wisest method is certainly to levy them from the proprietors of the soil. The objections arising from their incapacity, whether the effect of bad education, indolence, or natural infirmity, on the other hand, must be guarded against.

266. Taking the whole of what has been said on this subject, relating to our Government in India, its form, the qualifications of the Collectors, the necessity of establishing a permanent plan, and of convincing our subjects that in future our measures will be directed by system into our collective consideration; after comparing the advantages and disadvantages of the several modes of agency which have been discussed, and after reflecting upon the evils resulting from fluctuating measures, I am of opinion that the settlement should be made with the zemindars upon a fixed and permanent plan. This opinion is not only conformable to the sentiments of others, whose authority I am happy to avail myself of, but also to the orders of the Court of Directors and intentions of the legislature. (*Pages 145 & 146.*)

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Para. 352. I have already observed that the proportion of the revenues to be left to the zemindars was never, as far as I know, fixed by any established rule, when they held the management of their own lands. I should however conceive that during the regulated periods of Mogul administration, it must in general have exceeded the amount of the moshaira fixed by us for their subsistence when out of possession. This conclusion I draw from two considerations; the opulence of the country and the manner in which the zemindars lived a few years before we obtained the Dewanny. Admitting these facts, which are established by the best information I can obtain, and by none as far as I know contradicted, the conclusion is probable.

353. When the lands were let in farm by us, the moshaira was fixed at ten per cent. upon the gross sudder jumma, that is, the amount of the engagements contracted by the farmers with the Government; such at least was meant to be the general allotment, although this proportion was not regularly adhered to, for when the zemindars were restored to the management of their lands at a reduced jumma, the original allowances were continued, and additions were even made for charges of Poolbundy servants and others.

354. No authoritative precedents were, I believe, quoted in fixing this amount, although it seems to have been understood as prescriptive. The circumstance of the malikana in Behar may have suggested it.

355. A proportion of nine-tenths of the zemindary receipts is surely as much as our Government ought to demand, if it means to regard the welfare of their subjects by zemindary receipts; I mean that proportion of the gross produce which comes to the zemindar after deducting intermediate profits and charges. I should hope that the profits of the zemindars would in time exceed this proportion, by a due attention to the improvement of their lands, and the encouragement of their ryots; and I should be happy if, without lowering the amount of the revenues, their profits could be at this time increased; but we are not authorized on this account to relinquish any part of what has hitherto been paid. (*Pages 157 & 158.*)

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Para. 365. I doubt if any precise rules of limitation can be fixed for determining the quantum of the profits to be left to the zemindars. The question applies to the present period only, and

the general principles for the regulation of it are these: that the settlement should be so estimated as to allow them, in common seasons, a profit of ten per cent. over and above the expenses of collection. In estates, the rents of which are greatly reduced, or capable of increase, either by improving the lands or by economical management, this sum, upon the principle of a fixed jumma, may be deemed too large at first. The circumstances of the district must be therefore attended to.

366. If the present jumma assessed upon the country were confirmed, although there would be inequalities in it, I have no doubt that, upon the whole, the profits of the zemindars, with due economy and attention, might be nearer fifteen than ten per cent. upon its amount. That this is actually the case I doubt.

367. The difference of expense to the proprietors of large estates is not in proportion to the difference of jumma. A zemindar whose lands yield to Government five lacks per annum would subsist with more ease and convenience on ten per cent. than another would on twelve, where the annual rated jumma is one lack of rupees. This consideration offers an objection against a fixed rate for the emoluments or allowances to the zemindars generally; where particular instances occur for the application of it a determination may be made upon them. There are other circumstances of a local nature, which may influence the determination of the Board.

368. I now advert to the third subject of enquiry, the rules for preventing oppressions upon the ryots by the zemindars and farmers, as well as collusions amongst the latter, tending to defraud the zemindars and farmers of their just dues.

369. In determining this question the rights of the zemindars, talookdars, and ryots ought to be first ascertained; and I shall here insert a summary of what I deem myself authorized to maintain upon these points, premising that I pretend only to state facts, and draw such conclusions from them as they fairly admit, without reconciling every apparent inconsistency either in facts or forms.

370. I consider the zemindars as the proprietors of the soil, to the property of which they succeed by right of inheritance, according to the laws of their own religion, and that the sovereign authority cannot justly exercise the power of depriving them of the succession, nor of altering it when there are any legal heirs. The privilege of disposing of the land, by sale or mortgage, is derived from this fundamental right, and was exercised by the zemindars before we acquired the Dewanny.

371. The origin of the proprietary and hereditary rights of the zemindars is uncertain; conjecture must supply what history does not mention; they probably existed before the Mahomedan conquests, and, without any formal acknowledgment, have acquired stability by prescription. I do not admit the sunnud, which the zemindars sometimes receive, to be the foundation of their tenure; which, though it may acquire confirmation from it, exists independent of this deed. The origin of the possession of some zemindaries may be traced to a grant, but the inheritance goes on without it.

372. The revenues of the land belong to the ruling power, which, being absolute, claimed and exercised the right of determining the proportion to be taken for the State.

373. The rights of the zemindars are limited and conditional. They cannot alienate lands from the public assessment, without the permission of the supreme authority; they are bound to make good their stipulated payments of revenue, under the penalty of suffering an equivalent loss of property, or of being deprived of the whole; and it is also their duty to preserve the peace of the country from infringement, and to secure their lands from inundation, by repairing the embankments of the rivers. The performance of these functions supposes the means of discharging them to be left with the zemindars.

374. Formerly, their services were required for the defence of the State, against rebellion or invasion, when they possessed the means of furnishing this assistance. This obligation was chiefly exacted from the principal zemindars, but was binding upon all.

375. The Government, in virtue of its claim to a portion of the rents, considered itself entitled to the minutest information regarding the land, its produce, the rents paid by the ryots, and all transfers in their possession. The duty of the mofussil canongoes was to record and furnish this information, and the accounts formerly kept by them were calculated to afford it.

376. The sanction of Government was often given to sales, mortgages, and successions; but the want of it did not, as far as I know, render them invalid.

377. No alienation of land by the proprietor, or diminution of the rental, could deprive the supreme authority of its title to the revenues of the land; it of course exercised the right of resuming such alienations, and of re-annexing them to the public assessment, as well as of enquiring into fraudulent diminutions of the jumma.

378. The Government sometimes interfered in regulating the rents paid by the ryots, and in some cases employed its own officers to collect them. Jaffier Khan's conduct offers a precedent of an interference to the exclusion of their zemindars; and the Institutes of Akber show that the relative proportions of the produce were settled between the cultivator and the Government; yet in Bengal I can find no instances of Government regulating those proportions. Although the nazims have attempted to collect the rents from the ryots, those attempts have been partial only, and do not warrant an inference that they were systematically pursued, which I do not believe was the case. The practice of appointing an officer to superintend and control the conduct of the zemindars was a more limited exercise of this authority, and was more general. This is established by a variety of instances. The officers thus employed were denominated aumils and sezawuls.

379. Admitting the proprietary rights of the zemindars, wherever Government supersedes the rights properly connected with them by collecting the rents from the ryots through its own officers, it follows that some provision should be made for the subsistence of the zemindars. I cannot find that this was ever formerly done in Bengal; nor can I learn that the Mogul Government in this subah ever established the proportion of the rents to be paid by the zemindar, the profits which he was to receive, or the allowance to be made to him, in case of his temporary dispossession. I conclude that the rules of limitation in these instances were never fixed. The settlement of Tury Mull appears to me to have furnished the standard for the demands of the State upon the zemindars, from the period of its establishment to the administration of Jaffier Khan, unless the measures of Sultan Sujah, of which I have no accurate information, should be deemed an exception. The augmentation of the general assessment by him was moderate.

380. Zemindars, during this interval, enjoyed the profits which they received over and above the stipulated standard; and, when they were temporarily dispossessed of the management, retained their nankar lands only without receiving any additional allowances; when a zemindar was deprived of his property, his right to the nankar ceased and was transferred to his successor.

381. The variation in the public demands from the standard of Tury Mull, for a period of one hundred and twenty years, was so small that the profits of a continued management would furnish a subsistence during a temporary dispossession; that the zemindars were often taxed by the nazims, or their officers for their private emolument, beyond the established demands, must be deemed probable, and during the period in question they could afford it.

382. Rights depending upon the discretion of the ruling power must be deemed precarious; despotism could extend its claims to the subversion of the rights of the zemindars without an avowed and direct infringement of them, but its practice, generally speaking, has been in favour of them. The zemindars of Bengal were opulent and numerous in the reign of Akber, and they existed when Jaffier Khan was appointed to the administration; under him and his successors their respective territorial jurisdictions appear to have been greatly augmented; and when the English acquired the Dewanny the principal zemindars exhibited the appearance of opulence and dignity.

383. A property in the soil must not be understood to convey the same rights in India as in England; the difference is as great as between a free constitution and arbitrary power. Nor are we to expect under a despotic Government fixed principles, or clear definitions of the rights of the subject; but the general practice of such a Government, when in favor of its subjects, should be admitted as an acknowledgment of their rights. (*Pages 159—161.*)

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Para. 388. With respect to the ryots, their rights appear very uncertain and indefinite. Whilst the demands of Government upon the zemindars were regulated by some standard, as I conclude it was from the time of Tury Mull to that of Jaffier Khan, they had little temptation or necessity to oppress their ryots; but the same variable discretion which has affected the payments required from them has extended in the same manner to the ryots. The rates of the lands were probably fixed formerly, according to the nature of the soil and its produce; the cesses imposed by the zemindars were an enhancement of these rates, and arbitrary without being at first oppressive.

389. It is, however, generally understood that the ryots by long occupancy acquire a right of possession in the soil, and are not subject to be removed; but this right does not authorize them to sell or mortgage it, and it is so far distinct from a right of property. This, like all other rights, under a despotic or varying form of Government is precarious. The zemindars, when an increase has been forced upon them, have exercised the right of demanding it from their ryots. If we admit the property of the soil to be solely vested in the zemindars,

we must exclude any acknowledgment of such rights, in favour of the ryots, except where they may acquire it from the proprietor.

390. Although much has been said with respect to the ryots, I shall nevertheless enter into a more particular detail of what regards them.

391. In every district throughout Bengal, where the license of exaction has not superseded all rule, the rents of the land are regulated by known rates called *nirk*, and in some districts, each village has its own; these rates are formed, with respect to the produce of the land, at so much per bega; some soil produces two crops in a year of different species, some three; the more profitable articles, such as the mulberry plant, betel-leaf, tobacco, sugar-cane and others, render the value of the land proportionably great.

392. These rates must have been fixed upon a measurement of the land, and the settlement of Tury Mull may have furnished the basis of them. In the course of time cesses were superadded to that standard, and became included on a subsequent valuation, the rates varying with every succeeding measurement. At present there are many abwabs or cesses collected distinct from the *nirk*, and not included in it, although they are levied in certain proportions to it.

393. The following abstract of a ryot's account, taken near eight years before this time, will show the mode in which this is done:—

				Rs.	A.	G.
Rent of 7 begas 12 cottahs 7 chattacks of land of various produce, calculated at a certain rate per bega according to its produce, extracted from an account of demands and payments, called Hissawb Korcha				14	0	8
Abwab Cesses.						
Chout at 3 16 per R.	2	10	0			
Poolbundy, a half Mo. demand or ½-4 of the jumma	9	7	2			
Nuzzerana one Mo or ½	1	2	15			
Mangun ditto	1	2	15			
Fouzdarry 3-4 of one Mo, amount or 1-16	14	15	0			
Company's nuzzerah one month and a quarter	0	1	7			
Batta, one anna per R.	0	0	14			
				8	12	2	2
Total ...				22	12	10	2
Khelaat at 1 anna and half per each rupee of the above sum				2	2	1	2
Total jumma ...				24	14	12	0

394. The first sum of Rs. 14-0-8 is called the original rate of the land, but even this may include cesses consolidated into it; some of the abwab, or cesses since added, are subsequent to the period of the Dewanny.

395. If the accounts of the same land were now examined, some additional impositions might appear. The zemindars introduce them by degrees, at intervals of two, three, four, or five years, and rarely attempt them for two or three years successively. Solicitation and influence are equally employed to effect the establishment of them; and a ryot, where the burthen is not too heavy, will rather submit than resist or complain. Temporary extortion may be practised at any time; but a permanent exaction of this nature can rarely be established by force alone upon the ryots.

396. *Tucka* puttahs generally express a fixed rate for the land at so much per bega, without any other article; but the sum total includes the several existing cesses at the period of adjustment, and others are sometimes again added and consolidated.

397. When the rents by successive impositions become too heavy the ryots either abscond, or the zemindar allows them a compensation by giving them other land at a favourable rate, but seldom by remitting either the imposts or diminishing the rates of the other lands. In some places, however, the accumulation of abwab has caused a proportionate diminution in the assul; this is particularly the case in Dinagepoor.

398. When a measurement of the lands takes place the existing rates are confirmed, and generally with some additions. Where none can be found a reference is made to the rates of other lands of the same quality, in the vicinity of the spot measured; but the adjustment of them in that case is a business of considerable difficulty. Every part of the transaction is a subject of contention: the demands on both sides are unreasonable, and are finally terminated by a compromise.

399. It is the business of the putwaree to register these rates, which were also formerly recorded by the Mofussil canongoes; and these, when wanted, became open to the inspection of the Government.

400. It would be impossible, I conceive, to fix specific rates for any one species of produce

in any district generally; the quality of the soil and the situation of the land, as enjoying the advantages of markets and water-carriage, must determine it. The remark applies to every species of produce.

401. Where the rates of land are specific and known, a ryot has a considerable security against exaction, provided the officer of Government attends to his complaints, and affords him redress, and without this he can have none. The additional sanction which he derives from a puttah, supposing it to be properly drawn out, is this, that it specifies, without reference to any other account, the terms upon which he holds the land, and the amount of the abwab or cesses which are not mentioned in the nerkbundy, nor always in the jummabundy.

402. In those places where the accounts are kept with the most regularity, and the established rates adhered to, the annual adjustment of the rent to be paid by each ryot, is not made without difficulty. The usual mode is to form a survey of the ground, and compare it with the accounts of the former year, in which every species of cultivation is specified, together with the relative situation of the land. Where the general appearance of the land corresponds with the detail of it in the accounts, the rent is adjusted without much difficulty; but where it differs, either by exhibiting a greater quantity of land in cultivation, or any article of a superior quality on the same land, the rents of such land are demanded, and a measurement is often adopted to determine them. The nature of the business shows that it can only be effected by a person well versed in it.

403. In the ordinations of the emperors, the officers employed in the collections are constantly encouraged and required to preserve the more valuable species of produce.

404. I suppose that the rents in Bengal may be collected according to ascertained rates throughout two-thirds of the country; and, notwithstanding the various abuses which I have detailed, it is evident that some standard must exist, for, without it, the revenues could never be collected from year to year as they have been. Exactions on one side are opposed by collusions on the other; but we may with certainty conclude that the ryots are as heavily assessed as ever they were.

405. The land is divided into ryoty and khamar; the rents of the former are paid in money, and of the latter in kind. The usual division is half to the zemindar, and half to the cultivator; but some part of the expenses generally fall upon the latter, in addition to the stipulated proportion.

406. Puttahs to the *khodkasht* ryots, or those who cultivate the land of the village where they reside, are generally given without any limitation of period, and express that they are to hold the lands, paying the rents from year to year. Hence the right of occupancy originates; and it is equally understood as a prescriptive law that the ryots who hold by this tenure cannot relinquish any part of the lands in their possession, or change the species of cultivation without a forfeiture of the right of occupancy, which is rarely insisted upon; and the zemindars demand and exact the difference. I understand also that this right of occupancy is admitted to extend even to the heirs of those who enjoy it.

407. *Pykaust* ryots, or those who cultivate the land of villages where they do not reside, hold their lands upon a more indefinite tenure. The puttahs to them are generally granted with a limitation in point of time; where they deem the terms unfavourable they repair to some other spot.

408. Such are the general usages and practice, as far as I have been able to ascertain; but there are local customs which can only be known by an examination on the spot. In some parts of the country, I understand that the zemindar is, by prescription, precluded from measuring the lands of the ryots, whilst they pay the rents according to the puttah and jummabundy. Amongst the inconveniences and abuses which may be inferred from this detail, the principal appear to be these:

The gradual introduction of new impositions.

The number of them, and intricacy attending the adjustment of the ryots' accounts.

409. I shall now proceed to state and consider the several propositions which have been made at various times, for the introduction of regularity, and the correction of the existing abuses.

410. Mr. Francis proposed that it should be made an indispensable "condition with the zemindar that, in the course of a stated time, he shall grant new puttahs to his tenants either on the same footing with his own quit-rents, that is, as long as the zemindar's quit-rent remains the same, or for a term of years, as they may agree." The former is the custom of the country. This will become a new assil jumma for each ryot, and ought to be as sacred as the zemindar's quit-rent. The puttah should be expressed in the simplest terms possible, without a single abwab or muthote; so much per bega of land which he cultivates, varying only according to the articles of produce or quality of the soil.

411. By some it has been proposed that the Collectors should grant puttahs to the ryots; and we have, I believe, on some occasions authorized this measure; but of late the applications on this subject have been postponed for general consideration.

412. It may be here proper, in addition to the observations which I have already recorded, to collect into one view the suggestions of the Collectors upon this subject.

Beerbhoom and Bishenpore.

413. The Collector, after enumerating the various frauds and impositions which exist, and which seem principally practised by the head ryots or munduls, recommends the general distribution of puttahs throughout Beerbhoom, as necessary to guard against them, and proposes a form for this purpose.

414. In additional security to the grand objects aimed at by the distribution of puttahs, he suggests the appointment of a sheristadar for each pergunnah. The description of the functions to be executed by this officer shows them to be of the nature of those formerly performed by the naib canongoes, with some extension of authority. He communicates the regulations adopted by himself for deciding upon the claims and disputes of the ryots.

415. But in Bishenpore he does not recommend puttahs, for this reason that it would preclude Government from the benefit of discovering frauds and collusions.

Burdwan.

416. In this zemindary the Collector informs us that not more than a fourth of the ryots are in possession of puttahs, and that those are granted by the farmers, or their gomastahs, and not by the zemindar; that the rent paid by the ryots is regulated by custom and usage, and that the puttahs are not permanent, for where a more profitable species of cultivation is produced than before the profit is accounted for by the ryots. Some of the puttahs which I have seen contain a condition to this effect. He further adds that the distinctions in the tenures of the ryots render any general form of puttah impracticable, nor a fixed quit-rent possible, either upon the quantity of the land or the quality of the produce; that the latter varies from accidental causes.

417. In obedience to orders he has nevertheless, with the assistance of one of the ablest zemindary officers, drawn out the form of a puttah, observing at the same time that the constant opposition to all innovation in mofussil management renders its process doubtful. In addition to this detail I must further add what I believe to be a fact, that the zemindary of Burdwan is at present in the highest state of cultivation throughout, although the ryots there are taxed heavier than in any district in Bengal.

Dacca.

418. The remarks apply to one division of the province only. The Collector, Mr. Day, informs us that the mode of collecting in the northern parts of the Dacca district is by making a hustabood or measurement of the lands held by each renter, immediately previous to the harvest, agreeably to which the lands are valued and rents received. He apprehends the same mode prevails elsewhere, and that nothing can be more discouraging to the renters.

419. The zemindars in general enter into no engagements with the ryots, but collect what they can. Allowed remissions never extend to ryots; they feel no increases.* The impositions are said to be numerous and unascertainable, and the want of engagements renders it impossible to detect abuses: this will require immediate remedy; and he proposes that the zemindars shall be compelled to enter into engagements with the ryots for the periods of their own leases. He sent the form of a puttah.

* *Sic* in orig.

Moorshedabad.

420. The Collector proposes various forms of puttahs, according to the rates of the lands, and the fixed or occasional residence of the ryots; he observes that these rates have been formed from minute inspection of the Mofussil accounts, the ryots, puttahs, and a mensuration of at least one village in each pergunnah; that the ryots from all parts came and examined the accounts and approved the form; a time was allowed for objections, but none were made.

Chittagong.

421. The rents of this district are collected by rates established by a measurement and jummabundy formed in the Bengal year 1174. It has never been the custom to grant puttahs to the fixed jummabundy ryots, who could refuse them, on an idea that the zemindars might then grant puttahs to whom they pleased; the rates and rules of assessment do not vary, and the jummabundy being established impositions on the ryots are easily ascertained and redressed.

Nuddea.

422. The collections from the ryots in this district are regulated by the amount paid in the last and preceding year; that without a measurement and jamabundy the custom of granting puttahs and collecting by them could not be introduced, as the quantity and quality of the land must form the basis of an equal assessment, and both with the rates ought to be specified in the puttah. In Mahomed Amynpore, which forms a part of the Nuddea Collectorship, the same rule of collection prevails; but a hustabood was formed from the Mofussil papers in 1178, Bengal style, by Mr. Lushington. No oppressive impositions have since been made, the ryots do not desert, and their situation appears tolerably satisfactory. In Satsyka and other places under the same authority the usage is similar.

Jessore.

423. The various inequalities in the rates of assessment, and the abuses prevailing, are related by the Collector, and suggested to him the recommendation of abolishing the present puttahs and granting others. He proposes the form of a puttah, which has been drawn out with the concurrence of the canongoes; the object of this is to fix specific rates, at which each article of assessment upon the assul jumma is to be collected, and not a specific sum for a given quantity of land, which would be impossible, unless a general measurement and new valuation of the lands were authorized. I am not sure that I understand the proposition.

424. The Collector discusses at large the subject of granting puttahs, and the mode in which it should be done, and his arguments merit attention; but I have extracted in this place whatever appears material to the question in one point of view only. It may, however, be proper to advert to a custom subsisting in Jessore, *viz.*, that the nominal rate of land is three rupees per bega, but that the real rate is only one, as the ryots possess fifteen begas where their puttahs state five only; and upon this last quantity the assessment of three rupees for each is made.

Rajshahy.

425. I could wish that the information on this extensive district had been more particular. The material part of it relating to the present question is as follows:—

That there is no difficulty for a capable mohrir to detect oppression on a ryot, as far as the enquiry depends upon his puttah, except where the batta is adjusted. That the ryots would hear of the introduction of new puttahs with an apprehension that no explanation could remove, and that he cannot transmit forms of puttahs to be executed by the zemindars and farmers to the ryots. That the rates of land may be procured, but that the great difficulty still remains unconquerable to anybody but a zemindar of ascertaining the quantity.

Dinagepore.

426. The abuses detailed sufficiently pointed out the necessity of regulating the demands upon the ryots by some rule. The Collector accordingly proposes the introduction of puttahs, but in a mode different from all others. He assumes the demand of Government upon the zemindar, as the foundation that is to be apportioned out through the pergunnahs and villages, and thence to graduate to the ryot by certain rules. The settlement, when it arrives at this gradation, is to be assessed upon the land, at a fixed rate per bega. He states the difficulties attending the execution of this plan, and the means of counteracting them, and observes upon it, that in the opinion of intelligent people no other mode for the introduction of puttahs can take place. He proposes that no puttahs should be valid without the Collector's signature.

Sylhet.

427. Of this district little need be said, as the very peculiar circumstances of it have induced the Board to order a measurement of it, which is now under execution.

Ramgur.

428. The varying customs of the different districts classed under this Collectorship render it difficult to lay down any rules for preventing abuses, which the Collector only can prevent; it is usual for the zemindars to give ticka puttahs at the beginning of the year, but if the grain is dear they insist upon being paid in kind. The remedy for this oppression is to punish exemplarily all abuses of this nature. No measurement has ever been made of Jeldia. A form of a puttah is proposed which he thinks will operate particularly well in Pacheat.

Rungpore.

429. The Collector, as long ago as March 1787, proposed the form of a puttah in Carjeehaut, which is not yet effectually carried into execution. He now recommends a general form for the districts under his charge upon similar principles.

Purneah.

430. The detail of the situation of this Collectorship is very minute. It is proposed by the Collector that he should be allowed to grant puttahs under the seal of the Cutcherry, at a certain sum including rents and taxes; that by this mode the annual traffic carried on by the munduls and putwaries in puttahs will be prevented; the demand of the zemindars will be limited, nor can the ryots lower the dues of Government.

24-Purgunnahs.

431. A form of puttah has already been adopted for the lands under this division, and the Collector informs us that puttahs are granted according to that form, and a general register kept of them.

432. This detail, without extending it unnecessarily, points out the objections to the immediate establishment of general rules, and the necessity of adapting them to the local circumstances of each district. In deviating from established usages we run a risk of substituting others of more detriment in their room. No order of Government should ever be issued unless it can be enforced; to compel the ryots to take out puttahs where they are already satisfied with the forms of their tenure, and the usages by which rents are received, would occasion useless confusion; and to compel the zemindars to grant them under such circumstances, or where the rules of assessment are not previously ascertained, would, in my opinion, be nugatory. When Mr. Francis proposed that the zemindars should be compelled to grant puttahs to the ryots within a limited time, he was not aware perhaps of the little intercourse subsisting between the more considerable zemindars and the ryots, nor that puttahs were generally granted by the farmers, gomastahs, and munduls of the villages. To require that the puttahs should be given for a definite time, as proposed by some of the Collectors, would diminish the force of that prescription which established a right of occupancy in favour of the ryots. In some places, as for instance in Jessore, the issuing of puttahs at present would tend to the confirmation of the existing abuses, by which it appears that the zemindar is more defrauded than the ryots oppressed, notwithstanding the numerous taxes imposed upon them.

433. In authorizing the Collectors to grant puttahs to the ryots we certainly deviate in some degree from an established principle, which I always assume, that the zemindars are the proprietors of the soil. I have admitted, it is true, on the grounds of precedent the right of the Government to interfere in regulating the assessment upon the ryots; but I object to the policy and propriety of this interference without evident necessity: where a zemindar has refused or evaded the execution of the orders prescribed to him for the security of his tenants, or is unable to execute them, the interference of the Collector may be expedient. The regulation of the rents of the ryots is properly a transaction between the zemindar or landlord and his tenants, and not of the Government, and the detail attending it is so minute as to baffle the skill of any man not well versed in it. Where rates exist, or where the collections are made by any permanent rules, the interference of the Collector would be unnecessary; where the reverse is the case he would find it difficult to adjust them. Errors committed by a Collector should not be left to the subsequent correction of a zemindar; but it is the duty of an officer of Government to correct those of the zemindars. Nothing but necessity should ever induce us to authorize the Collector to fix the rates of assessment on the land. In trusting to established custom, and to the mofussil officers under the inspection of the zemindary servants, we have a more safe reliance than the interposition of a Collector, who has already sufficient employment to occupy his whole time. I do not see the same objection in authorizing him to affix his signature to the puttah or jamabundy of a ryot after it has been settled by the zemindary officers. (*Pages 162—169.*)

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Para 449. I shall now state the measures which have heretofore been adopted for the purpose of limiting the exactions of the zemindars and farmers, and the collusions of the ryots, as well as the reasons which have prevented their operation.

450. When the five years' settlement was concluded by the Committee of Circuit several conditions were inserted in the agreements of the farmers and zemindars, calculated for the security of the Government and benefit of their tenants. Thus they were prohibited resuming lands applied to religious or charitable uses, exclusive of the original revenue land, and collecting the various impositions known by the name of bazee jumma, haldarry, moracha, and salamy. They were precluded making any new grant of brohmutter, &c.; they were directed to collect from the cultivated lands of the ryots in the mofussil the original jumma of the last and foregoing year, and abwab established in the present, and on no account to demand more; where the lands were cultivated without puttahs by the ryots they were to collect according to the rates of the pergunnah. By another clause of the rates of the former mal-

guzarry, the puttah for the present year's cultivation was to become the standard of the collections from the ryots, and penalties were enacted for a breach of this. The receipt of any nuzzer salamy parbunny was prohibited.

451. A mohrir was also appointed on behalf of Government to take comparative account of the serishta, and secret and clandestine collusions were expressly prohibited.

452. In explanation of a former article it was ultimately fixed that the assul and abwab of 1172, together with the abwab accumulated thereon by the records of the sudder since the year 1173, were to be consolidated and to form the standard of the collections.

453. The regulations, though less accurate in terms than they might have been, had a reference to an established principle of collecting, and it is very apparent that if they had been enforced the present difficulties would not have existed; but the truth is that they were not; and at the expiration of the five years the state of the mofussil was less known than when the settlement took place.

454. The farmers collected what they could; they measured their demands by the abilities of their tenants. Ignorance of the actual state of the mofussil was a bar to the detection and prevention of abuses. The Government embarrassed by two opposite motives—the necessity of realizing the settlement which they had made, and a desire to prevent exactions—were sometimes obliged to support the farmers, and at other times to restrain them. The effect, however, in both cases was a deficiency in the public payments. The recall of the Collectors in 1781 contributed still further to involve all past experience in obscurity and to multiply the confusion which prevailed.

455. The cabooleat then established has been since continued; and every succeeding farmer, by the terms of it, has deemed himself authorized to collect what his predecessor demands. Hence every new cess has, in fact, become confirmed.

456. The only observation which I shall here add to this detail is, that we are not to infer the inutility of the restrictions imposed, because they were not enforced, a distinction which may with great justice be applied to the measures of this Government. (*Page 172.*)

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528. We know also that the zemindars continually impose new cesses upon their ryots, and having subverted the fundamental rules of collection measure their exactions by the abilities of the ryots. This is a very serious evil, for exclusive of the injury which the unprotected subjects of Government sustain from it a necessity follows of our interference to regulate the assessment upon them, a task to which we are rarely equal. That it has been accomplished is admitted, but generally I believe, either at the expense of Government or its subjects, that is, the jamma is lowered beyond what it ought to be, or kept up at too high a rate. The former is most often the case.

529. I shall not urge these arguments beyond what is fair. In opposition to them it has already been observed that the demands of Government have been fluctuating; that the zemindars have had no certain security of enjoying the advantages arising from a due administration of their estates, and hence have wanted the encouragement which the present system is meant to give, and have perhaps been forced into practices which, under a permanent system, would have been forborne.

530. But the ignorance and incapacity of the zemindars are not to be forgotten. The consequences are equally prejudicial to Government and its subjects, whether derived from this source or any other.

531. The security now to be given to the zemindars is more substantial than ever it was, and if the system proposed had been adopted when we acquired the Dewanny, and successively adhered to, both the Government and its subjects would have experienced the benefit of it. Some time will now be required to convince the zemindars that we are serious, and a longer period elapse before they can or will obtain a knowledge of their interests, and of the mode of conducting them. To eradicate those habits and impressions which have been continued through life is scarcely to be expected during the present generation. Sufferance will at first teach them, and the stability of our measures must promote self-interest. Government begins by giving them an example of good faith. In relying therefore upon the operation of the principle which we assume, we ought not during the process of it to abandon the ryots to caprice or injustice, the result of ignorance and inability. With knowledge, or the means of obtaining it, we may correct the consequence of both; and at present we must give every possible security to the ryots as well as to the zemindars. This is so essential a point that it ought not to be conceded to any plan. (*Page 183.*)

The great ability displayed in Mr. Shore's Minute, which introduced the propositions for the settlement, the uncommon knowledge which he has manifested of every part of the

Minute by the Governor General (Lord

(Cornwallis,) dated 18th September 1789.

revenue system of this country, the liberality and fairness of his arguments, and clearness of his style, give me an opportunity, which my personal esteem and regard for him, and the obligation I owe him as a public man, for his powerful assistance in every branch of the business of this Government, must ever render peculiarly gratifying to me, of recording my highest respect for his talents, my warmest sense of his public-spirited principles, which, in an impaired state of health, could alone have supported him in executing a work of such extraordinary labour; and lastly, my general approbation of the greatest part of his plan.

I am confident, however, that Mr. Shore, from his natural candour, as well as the public at large, will readily admit, that deeply interested as I must feel myself, in the future prosperity of this country, it would be unjustifiable in me to take any step of real importance, upon the suggestion even of the most capable adviser, without seriously weighing it in my own mind, and endeavouring to reconcile the propriety of it to my own conviction.

Impressed with these sentiments, I am called upon by a sense of indispensable duty to declare, that I cannot bring myself to agree with Mr. Shore in the alteration which he now proposes to make in the second Resolution, of leaving out the notification to the landholders, that if the settlements shall be approved by the Court of Directors, it will become permanent, and no further alteration of the jumma take place at the expiration of the ten years.

When the Court of Directors determined to retain in their own hands the right of confirming or annulling the settlement at the expiration of a given term, they undoubtedly acted with becoming wisdom and caution.

The power of making a perpetual and irrevocable settlement of a great empire without being subject to the revision of the controlling authority at home, would, in my opinion, have been too great to delegate to any distant Government. I cannot, however, believe that they would have held out the flattering hopes of a *permanent* settlement, which alone in my judgment can make the country flourish, and secure happiness to the body of inhabitants, unless they had been predetermined to confirm the perpetuity, if they found that their servants here had not failed in their duty, or betrayed the important trust that had been reposed in them. Nothing, I am persuaded, but our expressing doubts and fears can make them hesitate; and as I have a clear conviction in my own mind of the utility of the system, I shall think it a duty I owe to them, to my country and to humanity, to recommend it most earnestly to the Court of Directors to lose no time in declaring the permanency of the settlement, provided they discover no material objection or error; and not to postpone for ten years the commencement of the prosperity and solid improvement of the country.

Mr. Shore has most ably, and in my opinion, most successfully, in his Minute delivered in June last, argued in favour of the rights of the zemindars to the property of the soil. But if the value of permanency is to be withdrawn from the settlement now in agitation, of what avail will the power of his arguments be to the zemindars, for whose rights he has contended? They are now to have their property in farm for a lease of ten years, provided they will pay as good rent for it, and this property is then to be again assessed, at whatever rent the Government of this country may, at that time, think proper to impose. In any part of the world, where the value of property is known, would not such a concession of a right of property in the soil be called a cruel mockery?

In a country where the landlord has a permanent property in the soil, it will be worth his while to encourage his tenants, who hold his farm in lease, to improve that property; at any rate, he will make such an agreement with them as will prevent their destroying it. But when the lord of the soil himself, the rightful owner of the land, is only to become the farmer for a lease of ten years, and if he is then to be exposed to the demand of a new rent, which may perhaps be dictated by ignorance or rapacity, what hopes can there be,—I will not say of improvement, but of preventing desolation; will it not be his interest, during the early part of that term, to extract from the estate every possible advantage for himself; and if any future hopes of a permanent settlement are then held out, to exhibit his lands at the end of it in a state of ruin?

Although, however, I am not only of opinion that the zemindars have the best right, but from being persuaded that nothing could be so ruinous to the public interest, as that the land should be retained as the property of Government, I am also convinced, that failing the claim of right of the zemindars, it would be necessary for the public good, to grant a right of property in the soil to them, or to persons of other descriptions. I think it unnecessary to enter into any discussion of the grounds upon which their right appears to be founded.

It is the most effectual mode for promoting the general improvement of the country, which I look upon as the important object for our present consideration.

I may safely assert, that one-third of the Company's territory in Hindoostan is now a jungle inhabited only by wild beasts. Will a ten years' lease induce any proprietor to clear away

that jungle and encourage the ryots to come and cultivate his lands; when, at the end of that lease, he must either submit to be taxed, *ad libitum*, for their newly cultivated lands, or lose all hopes of deriving any benefit from his labour, for which perhaps, by that time, he will hardly be repaid?

I must own that it is clear to my mind, that a much more advantageous tenure will be necessary to incite the inhabitants of this country to make those exertions which can alone effect any substantial improvement.

The habit which the zemindars have fallen into, of subsisting by annual expedients, has originated, not in any constitutional imperfection in the people themselves, but in the fluctuating measures of Government; and I cannot therefore admit, that a period of ten years will be considered by the generality of people, as a term nearly equal in estimate to perpetuity.

By the prudent landholders it will not, whatever it may be by proprietors of a contrary description. It would be unwise therefore to deny the former the benefit of a permanent system, because the mismanagement of the latter will not allow them to derive the same advantage from it.

It is for the interest of the State, that the landed property should fall into the hands of the most frugal and thrifty class of people, who will improve their lands and protect the ryots, and thereby promote the general prosperity of the country.

If there are men who will not follow this line of conduct when an opportunity is afforded them, by the enaction of good laws, it surely is not inconsistent with justice, policy, or humanity, to say, that the sooner their bad management obliges them to part with their property to the more industrious the better for the State.

It is immaterial to Government what individual possesses the land, provided he cultivates it, protects the ryots, and pays the public revenue.

The short-sighted policy of having recourse to annual expedients can only be corrected by allowing those who adopt it to suffer the consequences of it, leaving to them at the same time the power of obviating them by pursuing the opposite line of conduct.

Mr. Shore has stated but two positive objections to the latter part of the 2nd Resolution: The first is, that if after the notification that the settlement is proved by the Court of Directors, it will be declared permanent, the Court of Directors should not declare the permanency, the confidence of the natives in general will be shaken, and that those who relied on the confirmation, will be disappointed, and conclude that it was meant to deceive them.

Sic in orig.

I can only say, in answer to this objection, that I cannot believe any people to be so unreasonable as to accuse Government of a breach of faith, and an intention to deceive them, for not doing what Government in express terms assure them it is not in their power to promise to do, as it must depend upon the approbation of their superiors.

The only effect of the notification will, in my opinion, be to encourage the landholder to offer—all that Government asks, or wishes for,—a fair rent, lest by endeavouring to withhold what he knows he ought in justice to pay, he should forget that greatest of all blessings, a real property; and to stimulate him to more exertion in his cultivation.

But supposing even for a moment that the declaration would be received in the sense apprehended, and that the zemindars were to act under a conviction that it was well founded, let us examine the nature of these acts, and whether the consequences of them would be such as to shake the confidence of the natives, or to operate otherwise, in any respect, but advantageously to themselves. The acts alluded to must of course be such as are calculated to promote the improvement of the country; as the assisting the ryots with money, the refraining from exactions, and the foregoing small temporary advantages for future permanent profits: such acts must ultimately redound to the benefit of the zemindars, and ought to be performed by them, were the settlement intended to be concluded for ten years only, or even to be made annually.

But this provident conduct cannot be expected from them so long as they have any grounds for apprehending that their land, when improved, may be committed to the management of the officers of Government, or made over to a farmer.

Should the zemindars, therefore, misconstrue the meaning of the declaration, and act in consequence of that misapprehension, they would find themselves enriched by the error; and this result, instead of tending to shake their confidence in Government, might teach them an useful lesson, from which they would profit under any system of management. I shall further observe on this argument, that it is founded on a supposition, that when the zemindars are convinced that the demand of Government on their lands is fixed, they will adopt measures for the improvement of them, which they will not have recourse to, so long as that demand is liable to occasional variation, and, consequently, strongly points out the expediency of a

permanent settlement, and declaring to the landholders as soon as possible, that the conclusion of a permanent settlement with them, is the object of the legislature in England, as soon as it can be effected upon fair and equitable terms.

The second objection is, the doubt of its being expedient that the permanency should be declared.

Mr. Shore says we cannot pronounce absolutely upon the success of our measures without experience. I must ask, what are these measures, on the success of which there can be no doubt? or, what is the experience that is wanting, and what, by delaying a permanent settlement for a few years, would probably be improved?

There is nothing new in this plan except the great advantages which are given to the zemindars, talookdars, and ryots on one side, and the additional security which the Company has against losses by balances from the value of the land, which is to be sold to make them good, being greatly increased on the other. By what probable, I may even say possible, means is such a plan to fail?

I understood the word permanency to extend to the jumma only, and not to the details of the settlement, for many regulations will certainly be hereafter necessary for the further security of the ryots in particular, and even of those talookdars who, to my concern, must still remain in some degree of dependence on the zemindars; but these can only be made by Government occasionally as abuses occur; and I will venture to assert that either now, or ten years hence, or at any given period, it is impossible for human wisdom and foresight to form any plan that will not require such attention and regulation; and I must add that if such a thing was possible, I do not believe that it will be easy to find a man more capable of doing it than Mr. Shore.

I cannot, however, admit that such regulations can in any degree affect the rights which it is now proposed to confirm to the zemindars, for I never will allow that in any country Government can be said to invade the rights of a subject, when they only require, for the benefit of the State, that he shall accept of a reasonable equivalent for the surrender of a real or supposed right, which in his hands is detrimental to the general interest of the public, or when they prevent his committing cruel oppressions upon his neighbours, or upon his own dependents.

The Court of Directors have given us a general idea of the amount of the land-revenue from Bengal and Behar, with which they will be satisfied, if we honestly and faithfully make a settlement equal, and even beyond their expectations, in point of revenue, and at the same time calculated in its outlines to promote the prosperity, happiness, and wealth of their subjects, what reason can we have to apprehend that they will not declare its permanency?

From the constitution of our establishments in this country, it almost amounts to an impossibility, that at any period, the same Government, the same Boards, or the same Collectors should continue for near the space of ten years; upon what grounds then are the Court of Directors to look for more knowledge and useful experience at the expiration of that term, and under all contingencies that may be reasonably expected to occur? I cannot avoid declaring my firmest conviction, that if those provinces are let upon lease for that period only, they will find, at the end of it, a ruined and impoverished country, and that more difficulties will be experienced than even this Government have had to encounter.

In regard to the 4th resolution respecting gunges, bazars, &c., &c., as Mr. Shore has proposed, that for the present they shall be placed under the management of the Collectors, I will not at this time enter at large upon that question, for I feel very sensible how important it is that the orders for the Behar settlement should be transmitted to the Collectors of that district without losing a minute's time unnecessarily; and I shall soon have an opportunity of delivering my sentiments fully upon it, when the Bengal settlement comes under our consideration.

I must, however, observe, that of the six references which are proposed to be made to the Collectors, I cannot see the smallest use in any of them, except the last, which goes to the expediency of the measure.

As to the question of right, I cannot conceive that any Government in their senses would ever have delegated an authorized right to any of their subjects, to impose arbitrary taxes on the internal commerce of the country. It certainly has been an abuse that has crept in, either through the negligence of the Mogul Governors, who were careless and ignorant of all matters of trade; or, what is more probable, connivance of the Mussulman aumil, who tolerated the extortion of the zemindar, that he might again plunder him in his turn.

But be that as it may, the right has been too long established, or tolerated, to allow a just Government to take it away, without indemnifying the proprietor from any loss. And I never heard that, in the most free state, if an individual possessed a right that was incompatible with the public welfare, the legislature made any scruple of taking it from him, provided

they gave him a fair equivalent. The case of the late Duke of Athol, who, a few years ago, parted very unwillingly with the sovereignty of the Isle of Man, appears to me to be exactly in point.

I agree with Mr. Shore, that there would be a degree of absurdity in Government's taking into their own hands the gunges, &c., which are annexed to zemindarry rights, and leaving the same abuses existing in those which belong to jaghire and altumgha possessions; but instead of leaving the former on that account, I should most undoubtedly take away the latter, securing to the proprietors a liberal and ample equivalent for all such duties as were not raised, in absolute and direct violation of the orders of Government.

There are, however, several articles, in what are called the sayer collections, with which Government has no occasion to interfere, and which may very well be left in the hands of the proprietors. (*Pages 591—595.*)

Mr. Shore's 2nd Minute, 18th Sept 1789.

I have perused, with deliberate attention, the Minute of the Governor General, in opposition to two points, in the proposition which I submitted to the Board. The question at present between us is, whether a notification shall be made to the proprietors of the soil in Behar, that the settlement, if approved by the Court of Directors, will become permanent, and no further alteration to take place at the end of the ten years. My opinion is, that it ought not to be made, because the declaration will produce little, if any, advantages, whilst it may be attended with great inconvenience. The Governor General, on the contrary, contends, that great benefit will result from the declaration; that it will be attended with no inconvenience, and that the suppression of it will be in the highest degree detrimental.

After thanking the Governor General for his approbation of my public conduct, which I value as highly as any that can be bestowed upon it, I shall now support my former opinion, in which I am strongly confirmed, with the same freedom with which I invite discussion.

A declaration of the nature of that in question, is by no means adapted to the habits or modes of thinking of the people to whom it is addressed; and it is from their understandings, and not from our own conceptions, that our conclusions, as to its effects, must be drawn. With men who have seen systems vary with every change of administration, and new plans successively introduced under the same Government, I can never expect that a declaration, conditional in its terms, will have that effect which the Governor General supposes, in opposition to the whole experience of their lives, and this too, at a moment of innovation, when we are introducing a system of management different from any that has ever yet subsisted in Behar, since it came under the dominion of the English.

The declaration implies an attempt to reconcile the idea of a dubious perpetuity, with an absolute engagement for a limited time; the zemindars and talookdars will look to the latter only, relying upon it, from year to year, until experience shall have shown that reliance to be well founded.

I do not admit, that by withholding the declaration, the idea of permanency, as far as the proprietary rights of the zemindars are concerned, is withdrawn, or that the acknowledgment of those rights by such a measure, ceases to avail to them, the contrast between annual imposition, and a certainty of ten years, suggests a very different conclusion, great as the difference is in fact, between a permanency of ten years, and a perpetuity, yet under the present circumstances of the country, the difference between the former and an annual assessment, will, to the conceptions of the people in general, if they reason at all, appear equally great and beneficial.

I have said, that in the estimate of the people, a period of ten years will be nearly equal to perpetuity; and although the Governor General differs with me in opinion, I still think the position well founded, supposing the possibility of some exceptions; yet the confidence of the natives in the stability of this assessment will not be immediate, but arise from time and experience; and those who do rely upon it, must, for their own security, exert themselves. I am not inclined to expect any sudden revolution in the habits and opinions of the natives of this country, but rely upon time and the stability of our arrangements, to produce this change—that they are more influenced by temporary advantages than by a prospect of certain and remote benefit, and that their conduct is regulated by this principle, the concurrent experience of all will allow. We wish to infuse more prudent and economical principles, and we adopt the conduct calculated to produce this effect; but time and self-interest will be required to confirm them. When the zemindar of Nuddea undertook to be answerable for the revenues of that district, in April 1786, it was under conditions that left him without a possible chance of any advantage, under renunciation of a certain subsistence, and subject to a responsibility which was discharged by a sale of part of his zemindary.

Whether the proportion of jungle is more or less than a third of the Company's territorial possessions in Hindoostan, I know not; but with respect to the past, I am, from my own obser-

vation, as far as it has extended, authorized to affirm, that since the year 1770, cultivation is progressively increased, under all the disadvantages of variable assessments and personal charges; and, with respect to the future, I have no hesitation in declaring, that those zemindars who, under confirmed engagements, would bring their waste lands into cultivation, will not be deterred by a ten years' assessment from attempting it. If at this moment, the Government choose to confer grants of waste land in talookdary tenure, under conditions that no revenue should be paid for them during five years, and that at the end of ten, the assessment should be fixed according to the general rates of land in the districts where the tenures are situated they would find no difficulty in procuring persons to engage, even upon less favourable terms. If I mistake not, the grants in Ramghur were precisely upon these principles, which are conformable to the usage of the country. Because the utmost scope of encouragement is not held out by a ten years' settlement, it will not follow that none is afforded, or that the country, at the end of ten years, will become desolate. I desire to be understood in this place, that I do not mean to tax industry in proportion to its improvement

The Governor General seems to consider the declaration under discussion as equivalent in effect to an assessment in perpetuity, and his arguments are deduced from this principle, and from the necessity of establishing it. He considers a ten years' settlement as a bar to all solid improvement: my opinion and arguments oppose this interpretation of the declaration, and go to show, that improvement, if at all likely to happen, may be expected under a ten years' settlement. I do not consider the perpetuity of the assessment as properly forming any part of the present discussion, although it is required that our arrangements be made with a view to this principle. Such I understand to be the orders of the Court of Directors, whose reasoning upon this subject is not very different from my own; for they are of opinion that the idea of a definite term would be more pleasing to the natives than a dubious perpetuity; and upon this ground, and because they do at the same time, upon a full consideration of the subject, see other reasons for preferring a given term of years at present, they therefore direct that we form the assessment for a period of ten years certain.

But I have, on a former occasion, expressed my doubts whether the Company or Government in England should bind themselves to fix the assessment of this country in perpetuity. These doubts were suggested by mature consideration of the various existing abuses, which I have so fully detailed, and very serious reflection upon the consequences of them, and the difficulty of establishing regulations, which shall, in their progressive operation, correct them. They have a reference to the circumstances of the country at this time, independent of the question upon general principles: and I shall deem it my duty, before I leave this country, to point out more particularly the foundation of those doubts, and to declare whether I retain or renounce them. I shall only observe in this place, that although the land is a security to Government for its revenues, and although exactions and oppressions may lead to the transfer of it, from bad managers to economical substitutes, yet improvement may be long and effectually obstructed by the abuses practised, without leading to these consequences: if this were not the case, the amount sales of land would be much greater than they are at present.

The Governor General asks, what are those measures of which I require experience, before I can pronounce absolutely of their success? To reply to this question as fully as might be necessary, would require a detail beyond what my present time allows. I shall only therefore answer, that before I commit myself to recommend the confirmation of a settlement in perpetuity, I require the experience, that it has been formed with a due attention to the prescribed instruction; considering that two of the five Collectors in Behar, taking the result of their objections, have declared the proposed settlement impracticable; and a third officer, the Acting Collector of Bauglepore, has asserted, that a ten years' settlement will confirm all existing abuses, and that these are the agents by whom the settlement is to be formed, the expectation cannot be deemed unreasonable.

But if this were the place for discussing the perpetuity of the assessment, I should suggest another question;—whether we ought not to have some experience, that the regulations which we mean to establish are found in practice sufficient to correct the various abuses existing, in the detail of the collection? If these regulations are generally necessary, as I suppose them to be, it is very evident that they must be enforced, before we can expect improvement from the labours of the ryots, for whose ease and security they are principally calculated. I am willing to admit, that far greater abuses prevail in the detail of the collections in Bengal than in Behar; and that in the latter province, the rules for detecting and correcting them are more easily ascertained; as far, therefore, as the argument drawn from abuses applies, it is stronger, in one case than in another. In fixing the assessment upon the zemindars for a term of years, we remove one temptation to oppression; but the prosperity of the country must no less depend upon the energy with which our regulations are

enforced; and in forming a judgment from past experience, we may be allowed to entertain very justifiable apprehension, that, from a want of knowing sufficiently existing abuses, we may be under the necessity of correcting them in future by new rules, which may either affect the revenues of Government, or the stipulations of the zemindars. It is upon such considerations that my doubts arise. They have no reference to future inquisitions into the value of zemindary estates, which, as far as the amount of assessment is concerned, I deem in general sufficiently ascertained.

The confirmation of a perpetual assessment is a very serious consideration. I am not sure that in authorizing the settlement made by Mr. Law, we have not given sanction to an act of injustice, in perpetuating the exclusion of the proprietors of the soil, for their refusal to agree to the terms of the proposed settlement; but upon this, as well as the whole of this plan, I mean carefully to revise the opinions which I have recorded, and state what further occurs to me upon the subject.

Under the various circumstances which I have detailed, I cannot but adhere to my opinion regarding the declaration; and if it should with any produce effect that, the non-confirmation of it will be attended with this consequence, that it will shake the confidence of the natives, at the very time when it begins to operate. I cannot agree with the Governor General, that these provinces, if let upon a lease of ten years only, will be found in a depopulated state, or that more difficulties will then be experienced than even this Government have had to encounter; nor, that this inference can be established upon any other principle, than by proving that a permanency of ten years to those who have subsisted upon annual expedients is destructive.

With respect to the early periods of the decennial assessment, as far as the four or five first years, I think every advantage will be gained, which would be derived from a declared mokurrery; and at that period, if a perpetuity is to be established, it may be declared. I do not believe the zemindars would offer more at this time under one declaration than another; and if so, no advantage would arise to Government in this respect. I do not see the utility of the conditional declaration in any sense, and if it be resolved upon, I think it should succeed, not precede, the formation of the settlement, and, under certain limitations, that the zemindars fulfil their engagements, and comply with the regulations prescribed. If it be capable of producing any advantage, it will equally follow from this mode, as from a previous declaration; and if the Court of Directors should finally determine to confirm the settlement in perpetuity, the fourth or fifth year will be fully time enough and they will then have before them those documents and illustrations which they require, with the advantage of knowing the progress of the assessment for two or three years.

If the declaration be made at all, either now or subsequent to the formation of the settlement, the Court of Directors, if they should not approve it, are bound to declare their disapprobation of it.

The remaining part of the Governor General's Minute, relating to the gunges, bazars, &c., requires no observations at present. Whenever the subject comes under discussion, I shall support, or retract opinions, as I think right; at present, I shall only say, that whether the rights of the zemindars to the property of the gunges be denied, or admitted, no inconvenience can arise, as far as I see, from stating the questions which I have proposed. (*Pages 595—599.*)

Minute of Mr. Shore, 8th Dec 1789

I have lately recorded my doubts regarding the propriety of declaring the assessment now to be imposed upon the country, fixed and unalterable, and shall state, as concisely as the subject will admit, the circumstances which have suggested those doubts.

2. In support of the declaration it is contended, that property is insecure whilst it is exposed to arbitrary demands, and that industry is discouraged by apprehensions; that it will be taxed in proportion to its advance; that until property be fixed upon a solid foundation, the prosperity of a country can never be effectually promoted; and that it is an abuse of terms, to give the name of property to a tenure, which may be forfeited at the discretion of the ruling power, by the accumulation of exactions which it cannot discharge.

3. To the general principles upon which these arguments are founded, I yield my assent; but the application of them must be directed by circumstances of time and situation, which ought to be well considered.

4. It will, I believe, be admitted, that equality of taxation is of great importance; and, in justice, all the subjects of a State should contribute as nearly as possible, in proportion to the income which they enjoy under its protection. On the other hand, it is allowed that a considerable degree of inequality is a less evil than a very great degree of uncertainty; and that annual assessments of the land-tax give rise to more inconveniences than they pretend to rectify.

5. That the contribution of the zemindars are disproportioned to their respective incomes we know with certainty; we also profess to take from them nine-tenths of their receipts. The proportion paid by the cultivators of the soil may be reckoned at a half, or it may be nearer perhaps, to three-fifths of the gross produce. Taking this at 100 parts, the claims of Government may be estimated at 45. The zemindars and under-renters may be supposed to have 15, and 40 remains with the cultivators of the soil. In the two last classes, some enjoy considerably more than the assigned proportion; others again less.

6. Under these circumstances, allowing for the common variations in the state of society, in the improvement and in the decline of agriculture, and admitting the probable alteration in the value of silver, it is certain that the constancy of the assessment may be of great inconvenience, and even ruinous to many of the contributors; and in this case, there will be a necessity of some future alteration, which must always take place, to the disadvantage of Government, if the assessment be now declared fixed for ever.

7. But independent of these considerations, there are others peculiar to this country, which for a long series of years have more or less affected the annual revenue,—I mean, drought and inundation, and the consequences attending them—scarcity and distress. Can we declare that no allowance shall be made for calamities of this nature, when they are great and extensive? Mr. Law remarks, that should an earthquake happen, overflowing rivers deposit sand, or mistaken assessment render the village inadequate to bear the land-tax, the proprietor should be at liberty to resign the estate, which may be transferred to another. But the difficulty requires another solution, and under the principle of a fixed assessment, one or other of these consequences may ensue: that the estate of the proprietor may be forfeited, without any fault on his part; or, that the assessment will be subject to diminution, without a sufficient provision for the restoration of it; and I see much difficulty in guarding against them, under the preliminary supposition.

8. If, either from the causes stated, or from any other, any considerable alteration in the assessment should take place, the permanency of it becomes ideal only.

9. This is one light in which the subject is to be considered; there are other important circumstances to be attended to.

10. It is allowed that the zemindars are, generally speaking, grossly ignorant of their true interests, and of all that relates to their estates; that the detail of business with their tenants is irregular and confused, exhibiting an intricate scene of collusion, opposed to exaction and of unlicensed demand substituted for methodized claims; that the rules by which the rents are demanded from the ryots are numerous, arbitrary, and indefinite; that the officers of Government, possessing local control, are imperfectly acquainted with them, whilst their superiors further removed from the detail have still less information; that the rights of the talookdars dependent on the zemindars, as well as of the ryots, are imperfectly understood and defined; that, in common cases, we often want sufficient data and experience to enable us to decide, with justice and policy, upon claims to exemption from taxes; and that a decision erroneously made may be followed by one or other of these consequences—a diminution of the revenues of Government, or a confirmation of oppressive exaction.

11. To the truth of this detail, there will be no dissenting voice; and it follows from it that until the variable rules, adopted in adjusting the rent of the ryots, are simplified and rendered more definite, no solid improvement can be expected from their labours upon which the prosperity of the country depends. The difficulties attending this task are allowed by all who have had experience of it, nor is much required to know that to make an adjustment between two parties, where one fears and each suspects the other, in a country too, where every innovation is received with disgust and apprehension, local information, assiduity, and perseverance are indispensable requisites.

12. No one, I believe, is so sanguine as to expect that the perpetuation of the zemindary assessment will at once provide a remedy for these evils. Time must be allowed for the growth of confidence, and for the acquisition of knowledge. We know from experience what the zemindars are; and I am not inclined, in opposition to that experience, to suppose that they will at once assume new principles of action, and become economical landlords and prudent trustees of the public interests.

13. The necessity of some interposition between the zemindars and their tenants is absolute; the Government interferes by establishing regulations for the conduct of the zemindars, which they are to execute, and by delegating authority to the Collectors to enforce their execution. If the assessment of the zemindaries were unalterably fixed, and the proprietors were left to make their own arrangements with the ryots, without any restrictions, injunctions, or limitations, which indeed is a result of the fundamental principle, the present confusion would never be adjusted.

14. This interference, though so much modified, is in fact an invasion of proprietary right, and an assumption of the character of landlord, which belongs to the zemindar, for it is equally a contradiction in terms to say that the property in soil is vested in the zemindar, and that we have a right to regulate the terms by which he is to let his lands to the ryots, as it is to connect that avowal with discretionary and arbitrary claims. If the land is the zemindar's it will only be partially his property, whilst we prescribe the quantum which he is to collect, or the mode by which the adjustment of it is to take place between the parties concerned.

15. The most cursory observation shows the situation of things in this country to be singularly confused. The relation of a zemindar to Government, and of a ryot to a zemindar, is neither that of a proprietor nor a vassal, but a compound of both. The former performs acts of authority unconnected with proprietary right: the latter has rights without real property; and the property of the one, and the rights of the other, are in a great measure held at discretion. Such was the system which we found, and which we have been under the necessity of adopting. Much time will, I fear, elapse before we can establish a system perfectly consistent in all its parts, and before we can reduce the compound relation of a zemindar to Government, and of a ryot to a zemindar, to the simple principles of landlord and tenant. But substance is more important than forms. If the propositions of the Collectors for correcting the prevailing abuses be examined, they will be found defective; and the regulations which our experience has enabled us to establish will, when considered, appear indefinite where they ought to have the utmost precision. Orders which should be positive are tempered by cautious conditions, nor am I ashamed to distrust my own knowledge since I have frequent proofs that new enquiries lead to new information.

16. Notwithstanding repeated prohibitions against the introduction of new taxes, we still find that many have been established of late years. The idea of the imposition of taxes by a landlord upon his tenant implies an inconsistency; and the prohibition in spirit is an encroachment upon proprietary right, for it is saying to the landlord you shall not raise the rents of your estate. But without expatiating on this part of the argument, I shall only here observe that, with an exception of an arbitrary limitation in favour of the *Khod* and *Khast* ryots, the regulations for the new settlement virtually confirm all these taxes without our possessing any records of them, and without knowing how far they are burthensome or otherwise. In some cases a knowledge of those impositions has been followed by the abolition of them; in others, it may be equally necessary. Wherever it takes place, there is a risk that the assessment will suffer a proportionate diminution. At present they are in many places so numerous and complicated that after having obtained an enumeration of the whole, the amount of the assil with the proportionate rates of the several abwabs, it requires an accountant of some ability to calculate what a ryot is to pay, and the calculation may be presumed beyond the ability of most tenants. The puttah rarely expresses the sum total of the rents, and it is difficult to determine what is extortion.

17. The rates at which landed property is transferred by public sale, in liquidation of arrears to be assessed, are also to arise from regulations now to be established from the want of fixed data; the transfer is attended with embarrassment and mistakes: of this, the sales of Sercopore and Mundulghaut furnish sufficient proofs. There is one question of great importance connected with this part of the subject, whether a proprietor, by purchase, is or is not entitled to collect what his predecessors had done? At present, he deems himself authorized to collect all the articles existing at the time of his purchase, whether prohibited by old regulations or not; and the amount of the revenues thus collected is the estimate by which he regulates his purchase.

18. The arguments which I have stated may be reduced to the following summary—That with whatever care the assessment may be made, it is certain that there will be a considerable degree of inequality in it, and if, in any case, the inequality should be on the side of excess, it must be rectified by lowering the assessment; since to enforce the payment of it will be at the hazard and perhaps ruin of the proprietors: where it is unequally low the proprietors will gain and the Government will suffer; that from circumstances more particularly affecting the country, the establishment of an unalterable assessment seems attended with peculiar difficulties, and the attempt may be followed by a diminution of the public revenue whilst no probable means of preventing this consequence occur; that if the amount of it be allowed to depend at all upon contingencies, the chance in every instance will be against the Government.

19. On the other hand the necessity of prescribing regulations for simplifying the complicated rentals of the ryots (which ought if possible to be reduced to one sum, for a given quantity of land of a determinate quality and produce) of defining and establishing the rights of the ryots and talookdars with precision, together with the expediency of procuring clear data for the transfer by sale of public and private property are admitted.

20. Under all these circumstances, is it not better to introduce a new principle by degrees, than establish it at once, beyond the power of revocation? If we are certain that the assesment now to be established, can be formed with a sufficient degree of equality to be levied at all times, notwithstanding the supposed possible variations; if we are convinced that any meditated arrangements are sufficient to correct present and prevent future abuses, or that we can in the sequel establish regulations for this purpose, without affording pleas that shall affect the permanency of the assessment; if the relative rights of the individuals concerned are now sufficiently determined, or can be determined, without the same consequence from any future decisions; if we are sufficiently informed with respect to the present exactions to declare that they may be continued, without establishing a rack-rent, or if they are abolished, that the suppression of them will not diminish the assessment; no objections will remain to declare it permanent and unalterable. But upon these points, I have my doubts, and they are justified by past experience. The tribute of the Raja of Benares has been temporarily reduced, from the causes which I have stated, and the difficulty of a determination upon other points may be ascertained when the address from the Board of Revenue of the 30th August, accompanying a representation from the Collector of Dinagepore, comes under consideration. I presume that many zemindars are nearly in the same predicament with that of Dinagepore: the question regarding it is, whether certain taxes shall be consolidated and confirmed or not, and the determination will either establish or diminish the present assessment. The Collector's proposition refers the final decision to subsequent enquiry; and until that is made, no satisfactory determination can be passed. Those who contend for the permanency of the assessment, must maintain the affirmative of all the dubious propositions which I have stated, and whatever the ultimate resolution may be, it is at least necessary to point out the difficulties attending a decision,—justice to our successors requires this.

21. Objections to a permanent assessment have been made by others upon different grounds.

22. It is contended that the revenue proper to be drawn from these provinces may be prodigiously increased. I think not, and the argument has of course no weight with me; but in considering the question, it ought not to be suppressed. It is of much more importance that the assessment is not too high, when we declare it perpetual.

23. These reflections have no immediate connection with the plan of a decennial assessment, which is, at all events, to take place. I consider this as a period of experiment and improvement, during which, by a systematical conduct regularly directed to one object, we are to give confidence to the zemindars, and procure a simplification of the present complicated rental of the ryots. The foundation of this improvement is to be laid in regulations to be established, and the proposed reform depends upon the execution of them, without which, I may venture to predict, no assessment can be permanent. If at the end of the fifth, sixth, or any subsequent year, not exceeding the eighth, of the assessment, it shall be found that the desired improvement has been accomplished, that the relative rights of talookdars, ryots, and zemindars are rendered definite and precise, and that the country flourishes under the prescribed regulations, and the superintending care of the revenue officers, the settlement may again be extended to any period of ten or twenty years. The doubts which I have suggested will then be brought to a test. The question of a perpetual assessment may then be agitated with more accurate information, and if any errors have been committed in rating the value of the different districts they may be corrected.

24. It is very obvious that the country at large may be equal to the discharge of the present entire tribute; but, that from the inequality of the assessment, it may be found impracticable to collect it. A due distribution of it would prevent a diminution which, without it, may ensue. I am by no means inclined to tax industry by raising the assessment in proportion to improvements; but without attempting any increase upon the total amount, I shall suppose that fixed, and that the Government here is restricted from any augmentation of it during the ten years. The assessment at all events is to be unalterable; but if, from experience during the course of it, it should appear to have been imposed with any considerable inequality, or if a necessity should occur for lowering it, in partial instances, I see no objection, in reason or propriety, against a more correct distribution at the end of the period. If the rules proposed be confirmed with such improvements as the Board may adopt, and be duly executed, the observation of those employed will furnish clear and sufficient data for the correction of the assessment which is unconnected with any idea of raising the general land-tax imposed on the country;—it has a tendency only to secure that, which we think may be drawn from it.

25. If the assessment now to be established, instead of being formed upon gross calculations and averages, were regulated by a real knowledge of the sources whence it is drawn; if, instead of presumptions arising from the supposed collections of the zemindars, we knew what the ryots

paid, and whether that amount was burthensome or otherwise; and if the assessment of the land-tax were regulated by a general standard, the arguments founded on inequality would lose much of their weight: yet a reliance upon the best apparent information is fallible, as our recent experience regarding Midnapore proves; for if the assessment made by the Collector upon documents of the greatest probable authenticity had been declared permanent, the collection of it, if enforced, would have reduced many of the talookdars to distress, and some to ruin. Are we not as likely, or more so, to err in the distribution of the assessment upon a Collectorship, as upon the sub-divisions of a particular district?

26. The fatal consequences resulting from variations in system and practice are so manifest, that it is not without reluctance I record my doubts, regarding the practicability and policy of putting an end to them, by a declaration which, by establishing permanency, strikes at the root of the evil; and I should be happy to see these doubts resolved and refuted. The necessity of giving confidence to our subjects is absolute; and, upon this ground, the establishment of a decennial assessment, whatever partial objections may be made to it (and some there are) is expedient and indispensable. I think it probable that its amount will sustain some diminution, during the course of the period, and, at the conclusion of it, be less than in the first year. This probability, if it be admitted, suggests an argument against a permanent assessment. A temporary sacrifice may be made to inspire confidence; but to consent to a perpetual loss, whilst it can be regained without injury or injustice, is certainly not advisable. To those who have subsisted by annual expedients, who have been left at the mercy of variable discretion, a period of ten years will be in estimate nearly equal to a perpetuity; and, if the confidence gained during the course of it be confirmed in due time, little will be lost by the experiment, whilst it leaves room for the perfection of the system which we mean to establish, much less will then be left to hazard: and I hold it prudent, in establishing great innovations in principle, under an acknowledgment of defective information, to take experience for our guide. Our measures have a view to permanency; but before we declare it, prudence dictates that we should have some certainty, that the Government will not suffer by its liberality and that the benefits of it will extend to that class whose labours are the riches of the State. I submit my reflections to the discussion of the Governor General in Council, and to the decision of the Court of Directors, by whom it must be made.

27. I shall take this opportunity of recording some remarks upon the plan of settlement proposed, and in part executed, by Mr. Law. My doubts as to a permanent assessment apply to the fundamental proportion of his whole plan, although I am not sorry that it has been executed. The experiment will give rise to a further experience which may assist in determining upon the general question. I shall here pass over such parts of the plan as have an immediate and necessary dependence upon the principle of it.

28. With respect to the execution, the difference from former practice consists in this,—that the Government, through its own officers, fixes the assessment upon the villages, instead of imposing it upon entire purgunnahs as formerly, each village-holder being responsible for the quit-rent of his lands. There is an exception in the case of larger zemindaries: the assessment upon them is fixed upon the whole, and the distribution of that assessment is to be made upon the component villages. This alteration in practice will, I trust, be attended with sensible advantages.

29. But the perpetuity of assessment is qualified by Mr. Law by the introduction of a clause, that the proprietors of mokurrary tenures shall be subject to a proportion of a general addition, when required by the exigencies of Government. This qualification is, in fact, a subversion of the fundamental principle; for, the exigencies not being defined, a Government may interpret the conditions according to its own sense of them; and the same reasons which suggest an addition to the assessment may perpetuate the enhancement. The explanation given by Mr. Law to this objection is, that temporary extraordinaries must have temporary resources, and even the land at home is liable to a general tax during war; but the land-tax in England does not bear a proportion of nine-tenths to the income of the proprietor.

30. Notwithstanding the explanation, I shall consider the qualifying clause as either nugatory or pernicious, and as standing in direct contradiction to the principle of a mokurrary settlement. The very term implies an unalterable assessment; and, if the explanation be founded on necessity, it is decisive against the perpetuity of it.

31. It is certainly a question of some curiosity, as well as of importance, to inquire what ideas the people themselves entertain of this clause, in a deed which professes to confer upon them estates subject to a fixed land-tax. Is it possible to conceive that they understand the consequences of it, and their extent? The zemindars of Bengal would reason very accurately upon them, and conclude that the proposal to fix the assessment upon their estates unalterably and, at the same time, to connect that proposal with a clause authorizing enhancement at the

discretion of the Government, was irreconcileable in its terms, and they would probably indulge suspicions unfavourable to the intentions of the Government. It is unfair to conclude that a reliance upon the personal qualities of Mr. Law, his honour, his probity, and his zeal, so successfully displayed to the advantage of the Company, and for the happiness of those placed under his authority, has disarmed suspicion, and gained consent to a proposition, which has never been well considered or understood? Let this be as it may, I deem the proposition of mokurrary settlement, subject to an increase upon exigency, a solecism; and that permanency must be given up, or the clause be withdrawn.

32. One of Mr. Law's propositions is, that where there are proprietors of villages, they be confirmed in the possession of them, upon condition of paying the fixed tax; but, if they refuse acceding to the terms proposed, that they be excluded from all management and right in future, receiving a fixed allowance of 10 per cent. on the jumma payable to Government; and that their lands be conferred on creditable men, subject to this allowance, in addition to the fixed tax.

33. I shall consider the latter part of this proposition only, with an acknowledged regret that I did not view the consequences of it before in the light in which I now see them; and of course my objections to it were weaker than they ought to have been.

34. The persons affected by it are those whom we acknowledge to be the proprietors of the soil, and we have consented to take away their property in perpetuity, and bestow it upon others. The act, in my opinion, combines both injustice and impolicy.

35. For, although it is founded upon the refusal of the zemindars to take upon themselves the management of their estates, and although a provision has been stipulated for them, at the rates established by ancient usage, yet, when we consider the condition of the proprietors of the soil in Behar, the penalty appears immoderately severe. In the late instructions, which only profess the establishment of a decennial settlement, no estate is to be assigned to the management of an alien, until the reasons on which the proprietor's refusal is founded have been submitted to the consideration of the Board of Revenue. Similar precautions are prescribed, where the proprietors are not forthcoming.

36. That a man should relinquish his property, when it is offered to him in terms of security which he never before had, seems difficult to account for in any satisfactory way. The success of the mokurrary settlement relies upon a different principle; upon the anxiety to acquire, and the incitement to improve, an estate, the claims upon which are fixed; yet experience shows that the mind may be so far depressed by poverty or by oppression, as to be satisfied with a moderate advantage or income, secured without personal efforts. Whether this be the cause, or whether we assign the refusal to a want of confidence in the measures and professions of Government, or whether we attribute it to a consciousness of inability to reap the same advantages by management, which another can acquire; the objection, in every instance, is equally solid, when the justice of it is considered. The weight of the proposed assessment can hardly be deemed a well-founded objection; since those who succeed to the estates relinquished, must provide, over and above that amount, subsistence for the dismissed proprietor at the rate of 10 per cent. But I think the Government have gone too far in authorizing their perpetual dispossession of proprietors; and that this is a power which ought never to be delegated to any Collector, without the previous and express sanction of the Supreme authority in every instance.

37. From a cursory inspection of the accounts of Havelly Behar, I find that 70 villages, consisting of 22,452 bigas, and assessed at Rs. 18,535, have been taken from proprietors on account of their absence; that forty villages, containing 10,760 bigas, and assessed at Rs. 773, appear to have been taken from the proprietors, although no refusal is stated. To the greater part of the remainder, no explanation is annexed, whether there be any proprietors, and, if so, whether they declined to engage. I do not desire the Board to rely upon this statement as accurate, although I believe it will not be found materially erroneous; but they will probably think it necessary to require a particular explanation, exhibiting a list of the former proprietors in possession; of those who have been dispossessed, and of the causes of such dispossession, in all the districts where the mokurrary settlement has taken place.

38. With respect to absentees, the case is particularly hard; and if, upon their return, they should ask why their estates have been disposed of in perpetuity, I fear it would be difficult to give a satisfactory answer. The exclusion of them, as well as of the others, extends to their heirs, and it establishes, in every instance, a perpetual pension, and consequently a perpetual burthen on the State.

39. It may be asked, what is to be done, where the proprietors refuse, or are absent? The answer is obvious. Let us first be assured that the requisition made to those present is just in its terms; and, having decided this point, two modes occur,—either that Government,

as in the case of minors and females, should appoint a manager to the estate, or that it be let to farm for a term of years, with a reserve of subsistence to the proprietor. The objections to either of these modes I am aware of; but they result from necessity, not from choice; and it is far better that a system should bend to justice, policy, and humanity, than that those should be violated to support a system.

40. If my reflections upon two principal parts of the plan are just, they will suggest a very necessary caution, that in establishing principles we do not sacrifice justice. I am not ashamed to acknowledge what appears to me an error, and I think no time should be lost in rectifying the resolution which has tended to the perpetual exclusion of absent and recusant proprietors.

41. Another proposition is, that the waste lands remain as crown lands for future allotment, as proposals for them may be tendered.

42. The first question that arises upon this is—To whom do the waste lands at present belong? Are there no zemindars, proprietors of them? If there are, is Government, by usage or law, authorized to take them away, or have the proprietors consented to part with them? These are preliminaries which ought to be examined and decided.

43. But I shall consider the proposition in another point of view. The limits of the villages are left undetermined by any marked boundaries. The quantity of land in each although stated in bigas, is confessedly unascertained. The proprietors, therefore, may extend their possessions, and encroach upon the present waste lands gradually; and this mode it is most probable they will attempt, instead of undertaking the cultivation of waste lands, under any specific engagement to pay revenue for them. The proposition must, therefore, rely upon a new accession of inhabitants from foreign countries; and, in any other sense, it appears to me almost useless.

44. Notwithstanding the objections stated by Mr. Law, to determining the extent of the villages by ascertained boundaries, I still think this should be done, to guard against the consequences of litigated limits. He observes that he inserted the words in the pottah or title deed, of "more or less," as applied to the quantity of land, for the reciprocal security of Government and landholder; but the term is as likely to give rise to insecurity whenever a competition occurs between the two parties. To ascertain the limits of the land by boundaries, it will rarely, I conceive, be necessary to measure it. As they are now disposed of, there is no criterion for determining the quantity, for the term "more or less" precludes any ascertainment with regard to the number of bigas, and by what evidence can the extreme boundaries be defined? I think the Government ought to know what it gives, and the proprietor what he receives; and, provided limits were marked out, the term "more or less" would be unimportant. The difficulties of the operation are by no means, in my opinion, so great as Mr. Law apprehends. He says that the boundaries of cultivated villages are well ascertained; if so let them be marked and recorded.

45. If the plan should, in its progress, be attended with the improvement expected from it, the limits of the estates will then become very important; and some time or other, there will be a necessity for defining them. The objections of Mr. Law go, indeed, to the possibility of such a measure, for, if the proprietors themselves are ignorant and negligent; if they and the Collector's Assistants are liable to err, who is to undertake it? Or upon what evidence, under these suppositions (which I take up from Mr. Law's replies to my queries of 25th January 1789), are the Courts of Justice to decide, or what agents are they to employ to establish the facts on which a judgment should be made? But, if ever necessary to be done, the limits may certainly be marked with more facility at this time than they can be at any future period.

46. An objection has been made to the plan under discussion, that the revenue payable by each mokurrarrydar has not been ascertained with sufficient accuracy. I acknowledge Mr. Law's information upon this subject is not so satisfactory as I could wish; but, on the other hand, it is to be remembered that the total amount of the revenues of each pergunnah has been augmented and realized; so that, although Government may not have obtained the greatest possible amount, they have at least benefited in a considerable degree. To minute local examinations there are objections; but they are less forcible when considered as preparatory to a mokurrary plan, than upon the principle of a temporary assessment. I do not, however, admit that this increase is solely owing to the principle of the assessment, but assign it rather to the ability of the superintending officer.

47. In the general and particular instructions for the Behar Province, some propositions in Mr. Law's plan have been modified, and, I hope, improved. The subject would still afford room for ampler discussion; but the most important parts have been adverted to, and some observations, on particular points, will be found in my Minute of September 18th. It is only necessary further to observe that the defects in the fundamental principle of the plan, if it be

confirmed, must be corrected by annulling the clause which, in its operation, has a direct tendency to subvert it; and that the Government must either submit to rescind what they have approved, or confirm what, to me, appears impolitic and unjust. (*Pages 599—609.*)

Minute of the Governor-General, 3rd Feb. 1790.

I have considered Mr. Shore's Minutes on the proposed settlement of the revenue, which were recorded on the proceedings of the 18th September and 21st December last, with all the attention which the importance of the subject deserves, and which is due to the opinions of a man who is so distinguished for his knowledge of the revenue system of this country, and for whose public-spirited principles and general character I have the highest esteem.

After having experienced so much advantage from the able and almost uniform support that I have received from Mr. Shore during a period of near three years, it would have been particularly gratifying to me if we could have avoided to record different opinions at the moment of our separation; but a regard to the due discharge of public duty must supersede all other considerations; and I have at least the satisfaction to be certain that no private motives have influence with either of us, and that a sense of our duty alone has occasioned the few exceptions that have arisen to that general concurrence, which there will appear to have been in our sentiments, on almost all important points relating to the public business.

The interests of the Nation, as well as the Company, and the happiness and prosperity of our subjects in this country, are deeply concerned in the points on which we differ; and as the public good is our only object, I am persuaded that it is equally our wish that the final decision may be such as will most effectually promote it.

Mr. Shore, in his propositions for making the Behar settlement, objected to our notifying to the landholders the intention of the Court of Directors to declare the decennial settlement permanent and unalterable, provided that it meets with their approbation; and in his two last minutes he goes further, and endeavours to prove that a permanent assessment of the lands of those provinces would at any time be unadvisable. He also contends that the taking into the hands of Government the collection of all internal duties on commerce, and allowing the zemindars and others, by whom these duties have been hitherto levied, a deduction equal to the amount which they now realize from them will not be productive of the expected advantages to the public at large, and that it is moreover an unjustifiable invasion of private property.

Had I entertained a doubt of the expediency of fixing the demand of Government upon the lands, I should certainly have thought it my duty to withhold the notification of the intention of the Court of Directors which I recommended; but after the most mature and deliberate consideration of Mr. Shore's reasoning, being still firmly persuaded that a fixed and unalterable assessment of the land-rents was best calculated to promote the substantial interests of the Company and of the British nation, as well as the happiness and prosperity of the inhabitants of our Indian territories; and being also convinced that such a notification would render the proprietors of land anxious to have the management of their own estates, and in many instances induce them to come forward with more fair and liberal offers, at the period of making the new settlement, and at the same time, that even a disappointment of their expectations would be the cause of no real injury to them, or place them in a worse situation than they were before such hopes were held out to them, it became my indispensable duty to propose that the intentions of the Court of Directors should be published.

The notification has been accordingly made in the several Collectorships of Behar, and in the Collectorship of Midnapore in Orissa, the final orders for the settlement of which have been issued, and the same reasons will induce me to recommend its being published throughout Bengal.

The accompanying extracts from the correspondence of the Collector of Shahabad, in the Province of Behar, with the Board of Revenue, will prove that my expectations regarding the effect of this notification were well founded.

I now come to the two remaining points on which I have differed with Mr. Shore, and the final decision regarding which must rest with the Honourable Court of Directors, *viz.*, the expediency of declaring the decennial settlement permanent, and appointing officers on the part of Government to collect the internal duties on commerce.

The following appears to me to be Mr. Shore's principal objections to a permanent assessment: that we do not possess a sufficient knowledge of the actual collections made from the several districts, to enable us to distribute the assessment upon them, with the requisite equality; that the demands of the zemindars upon the talookdars and ryots are undefined; and even if we did possess a competent knowledge of the above points, there are peculiar circumstances attending this country, which must ever render it bad policy in the Government to fix their demand upon the lands.

I shall now offer such remarks as occur to me on the facts and arguments adduced by Mr. Shore, in support of the above objections.

Mr. Shore observes that we profess to take from the zemindars nine-tenths of their receipts, and, under these circumstances, allowing for the common variations in the state of society, in the improvement, and in the decline of agriculture, and admitting the probable alterations in the value of silver, it is certain that the constancy of the assessment may be of great inconvenience, and even ruinous to many of the contributors; and, in this case, that there will be a necessity of some future alteration, which must always take place to the disadvantage of Government, if the assessment be now declared fixed for ever.

Where there are any grounds for supposing that a system which secures to the landholder the possession of his lands, and the profits arising from the improvement of them, will occasion a decline in agriculture, then might we apprehend that a permanent assessment would, in a progress of time, bear hard upon the contributors; but reason and experience justify the contrary supposition; in which case a fixed assessment must be favourable to the contributors, because their resources will gradually increase, whereas the demand of Government will continue the same.

Equally favourable to the contributors is the probable alteration in the value of silver; for there is little doubt, but that it will continue to fall, as it has done for centuries past, in proportion as the quantity drawn from the mines, and thrown into the general circulation, increases. If this be admitted, the assessment will become gradually lighter, because, as the value of silver diminishes, the landholder will be able, upon an average, to procure the quantity which he may engage to pay annually to Government, with a proportionably smaller part of the produce of his lands, than he can at present.

The circumstance of the country being occasionally liable to drought and inundation, which Mr. Shore adduces as an argument against a permanent assessment, appears to me strongly in favour of it. The losses arising from drought and inundation are partial and temporary; the crops only are damaged or destroyed; the land is neither swept away by inundation, nor rendered barren by drought, but, in the ensuing year, produces crops as plentiful as those which it would have yielded, had it not been visited by those calamities.

Now, if Mr. Shore's calculation of the proportion which the zemindars in general receive of the produce of their lands be accurate, it is obvious that every temporary loss must fall upon Government; for so long as we profess to leave the zemindars no more than that proportion, and claim a right to appropriate the excess to the public use, from what funds are they to make these losses good? But when the demand of Government is fixed, an opportunity is afforded to the landholder of increasing his profits, by the improvement of his lands; and we may reasonably expect that he will provide for occasional losses from the profits of favourable seasons.

The necessity, therefore, of granting remissions to the landholders, for temporary losses, will diminish in proportion as the produce of the lands increases, and exceeds the demand of Government.

But let us suppose that hereafter it should be found necessary to grant remissions in districts which may suffer from drought or inundation, this is no argument against a permanent assessment; for, under the present system of variable assessments, we are frequently obliged to grant considerable deductions on these accounts, and there is no prospect of our being able to discontinue them, so long as the country is assessed at its full value, and no more is left to the landholder than is barely sufficient for his subsistence, and for defraying the charges of collecting the rents from his lands.

There is this further advantage to be expected from a fixed assessment, in a country subject to drought and inundation, that it affords a strong inducement to the landholder to exert himself to repair as speedily as possible the damages which his lands may have sustained from these calamities; for it is to be expected that when the public demand upon his lands is limited to a specific sum, he will employ every means in his power to render them capable of again paying that sum, and as large a surplus as possible, for his own use. His ability to raise money to make these exertions, will be proportionably increased by the additional value which the limitation of the public demand will stamp upon his landed property: the reverse of this is to be expected, when the public assessment is subject to unlimited increase.

I am of opinion, therefore, that there is no reason to apprehend a greater deficiency in the public revenues, from drought and inundation, when the assessment is fixed than we have hitherto sustained, under the system of variable assessments; on the contrary, that we have very sufficient grounds for supposing that the necessity for granting remissions on these accounts will become gradually less. It further appears to me that the practice of heaping up the public revenue, by charging occasionally the improved estate of one landholder with

deficiencies in the public revenue assessed upon the lands of his neighbour, is both unjust and impolitic; and that until this practice is discontinued, both the landholders and their under-tenants and ryots will in general remain in a state of impoverishment, and that landed property will continue at its present depreciated value.

Mr. Shore observes that the zemindars are ignorant of their true interests, and of all that relates to their estates; that the detail of business with their tenants is irregular and confused, exhibiting an intricate scene of collusion, opposed to exaction, and of unlicensed demand substituted for methodized claims; that the rules by which the rents are demanded from the ryots are numerous, arbitrary, and indefinite; that the officers of Government possessing local control are imperfectly acquainted with them, whilst their superiors, further removed from the detail, have still less information; that the rights of the talookdars dependent on the zemindars, as well as of the ryots, are imperfectly understood and defined; that in common cases, we often want sufficient data and experience to enable us to decide, with justice and policy, upon claims to exemption from taxes; and that a decision erroneously made may be followed by one or other of these consequences,—a diminution of the revenues of Government, or a confirmation of oppressive exaction; that no one is so sanguine as to expect that the perpetuation of the zemindary assessment will at once provide a remedy for these evils; that time must be allowed for the growth of confidence and the acquisition of knowledge; that we know from experience what the zemindars are, and that he is not inclined, in opposition to that experience, to suppose that they will at once assume new principles of action, and become economical landlords and prudent trustees of the public interests.

With regard to the ignorance and incapacity of the zemindars, admitting these defects to exist in that class of people to the extent supposed, I have already given it as my opinion that they are to be attributed greatly to the system of collecting the public revenue from their lands, which so long prevailed in this country; to keep them in a state of tutelage, and to prohibit them from borrowing money, or disposing of their lands, without the knowledge of Government, as we do at present, with a view to prevent them suffering the consequences of their profligacy and incapacity, will perpetuate these defects. If laws are enacted which secure to them the fruits of industry and economy, and at the same time leave them to experience the consequence of idleness and extravagance, they must either render themselves capable of transacting their own business, or their necessities will oblige them to dispose of their lands to others, who will cultivate and improve them. This I conceive to be the only effectual mode which this or any other Government could adopt to render the proprietors of the lands economical landlords and prudent trustees of the public interests.

I must here observe, however, that the charge of incapacity can be applied only to the proprietors of the larger zemindaries. The proprietors of the smaller zemindaries and talooks in general conduct their own business; and I make no doubt would improve their lands, were they exempted from the authority of the zemindars, and allowed to pay their revenue immediately to the public treasuries of the Collectors.

Admitting the detail of business between the zemindars and their under-tenants and ryots to be in the intricate state described by Mr. Shore, does it not prove that the various attempts hitherto made by successive administrations to simplify this intricacy have been defective in principle, and consequently establish the necessity of having recourse to other measures for that purpose? We have found that the numerous prohibitory orders against the levying of new taxes, accompanied with threats of fine and punishment for the disobedience of them, have proved ineffectual; and, indeed, how could it be expected that whilst the Government were increasing their demands upon the zemindars, that they in their turn would not oppress the ryots, or that a farmer whose interest extended little further than to the crops upon the ground would not endeavour to exact, by every means in his power, as large a sum as possible over and above the amount of his engagements with the public.

If the officers of Government possessing local control are imperfectly acquainted with the rules by which the rents are demanded from the ryots, and their superiors further removed from the detail, have still less information of them, at what period are we to hope that Government and its officers will obtain a more perfect knowledge of them? The Collectors have now been three years acting under positive instructions, to obtain the necessary information for concluding a permanent settlement. They have transmitted their reports, and if the information contained in them, and the numerous discussions on the same points, recorded on the proceedings of former administrations are insufficient for us to act upon, at what period, and from whom, are we to expect to procure more perfect materials? Most of the Collectors who have furnished the last reports are now upon the spot, and are the persons best qualified for carrying into execution the system which we may adopt. It is to be supposed that they have communicated all the information which they possessed; and no further lights are therefore to be expected

from them. Shall we act upon this information, or shall we wait for other Collectors and fresh reports; or shall we calmly sit down discouraged by the difficulties which are supposed to exist, and leave the revenue affairs of this country in the singular state of confusion in which they are represented to be by Mr. Shore?

In order to simplify the demand of the landholder upon the ryots or cultivator of the soil we must begin with fixing the demand of Government upon the former; this done, I have little doubt but that the landholders will without difficulty be made to grant puttahs to the ryots upon the principles proposed by Mr. Shore in his propositions for the Bengal settlement. The value of the produce of the land is well known to the proprietor or his officers, and to the ryot who cultivates it; and is a standard which can always be reverted to by both parties for fixing equitable rates.

Mr. Shore, in his Minute prefixed to his propositions for the Bengal settlement, has furnished the most satisfactory arguments, to prove the incompetency of the officers of Government to enter into this detail with any prospect of success. He observes: "That it would be endless to attempt the subordinate variations, in the tenures or conditions of the ryots; that it is evident, in a country where discretion has so long been the measure of exaction, where the qualities of the soil and the nature of the produce suggest the rates of the rents; where the standard of measuring the land varies, and where endless and often contradictory customs exist in the same district and village, the task must be nearly impossible; that the Collector of Rajshahy observes upon the subject, that the infinite varieties of soil, and the further variations of value, from local circumstances, are absolutely beyond the investigation, or almost comprehension, not merely of a Collector, but of any man who has not made it the business of his life."

It is evident therefore that the only mode of remedying these evils, which is likely to be attended with success, is to establish such rules as shall oblige the proprietors of the soil, and their ryots, who alone possess the requisite information for this purpose, to come to a fair adjustment of the rates to be paid for the different kinds of lands or produce in their respective districts. Mr. Shore's proposition, that the rents of the ryots, by whatever rule or custom they may be demanded, shall be specific as to their amount;—that the landholders shall be obliged, within a certain time, to grant puttahs or writings to their ryots, in which this amount shall be inserted, and that no ryot shall be liable to pay more than the sum actually specified in his puttah, if duly enforced by the Collectors will soon obviate the objection to a fixed assessment, founded upon the undefined state of the demands of the landholders upon the ryots.

When the spirit of improvement is diffused throughout the country, the ryots will find a further security in the competition of the landholders to add to the number of their tenants.

It is no objection to the perpetuation of the zemindary assessment that it will not at once provide a remedy for those evils: it is sufficient if it operates progressively to that end.

Mr. Shore observes that we have experience of what the zemindars are; but the experience of what they are, or have been, under one system is by no means the proper criterion to determine what they would be under the influence of another, founded upon very different principles. We have no experience of what the zemindars would be under the system which I recommend to be adopted.

I agree with Mr. Shore that some interference on the part of Government is undoubtedly necessary for effecting an adjustment of the demands of the zemindars upon the ryots; nor do I conceive that the former will take alarm, at the reservation of this right of interference, when convinced that Government can have no interest in exercising it but for the purposes of public justice. Were the Government itself to be a party in the cause they might have some grounds for apprehending the results of its decisions.

Mr. Shore observes that this interference is inconsistent with proprietary right; that it is an encroachment upon it to prohibit a landlord from imposing taxes upon his tenant, for it is saying to him that he shall not raise the rents of his estates; and that if the land is the zemindar's it will only be partially his property, whilst we prescribe the quantum which he is to collect, or the mode by which the adjustment is to take place between the parties concerned.

If Mr. Shore means that after having declared the zemindar proprietor of the soil, in order to be consistent, we have no right to prevent his imposing new abwabs, or taxes, on the lands in cultivation, I must differ with him in opinion, unless we suppose the ryots to be absolute slaves of the zemindars: every bega of land possessed by them must have been cultivated under an express or implied agreement, that a certain sum should be paid for each bega of produce, and no more. Every abwab, or tax, imposed by the zemindar over and above that sum is not only a breach of that agreement, but a direct violation of the established laws of the country. The cultivator, therefore, has in such case an undoubted

right to apply to Government for the protection of his property, and Government is at all times bound to afford him redress. I do not hesitate therefore to give it as my opinion that the zemindars neither now nor ever could possess a right to impose taxes or abwabs upon the ryots; and if from the confusions which prevailed towards the close of the Mogul Government, or neglect, or want of information, since we have had the possession of the country, new abwabs have been imposed by the zemindars or farmers, that Government has an undoubted right to abolish such as are oppressive, and have never been confirmed by a competent authority, and to establish such regulations as may prevent the practice of like abuses in future.

Neither is the privilege which the ryots in many parts of Bengal enjoy, of holding possession of the spots of land which they cultivate, so long as they pay the revenue assessed upon them, by any means incompatible with the proprietary rights of the zemindars. Whoever cultivates the land, the zemindars can receive no more than the established rent, which in most places is fully equal to what the cultivator can afford to pay. To permit him to dispossess one cultivator, for the sole purpose of giving the land to another, would be vesting him with a power to commit a wanton act of oppression, from which he could derive no benefit. The practice that prevailed under the Mogul Government, of uniting many districts into one zemindary, and thereby subjecting a large body of people to the control of one principal zemindar, rendered some restriction of this nature absolutely necessary. The zemindar, however, may sell the land, and the cultivators must pay the rent to the purchaser.

Neither is prohibiting the landholder to impose new abwabs or taxes on the lands in cultivation tantamount to saying to him that he shall not raise the rents of his estates. The rents of an estate are not to be raised by the imposition of new abwabs or taxes on every bega of land in cultivation; on the contrary, they will in the end be lowered by such impositions, for when the rate of assessment becomes so oppressive as not to leave the ryot a sufficient share of the produce for the maintenance of his family, and the expenses of cultivation, he must at length desert the land. No zemindar claims a right to impose new taxes on the land in cultivation, although it is obvious that they have clandestinely levied them, when pressed to answer demands upon themselves, and that these taxes have, from various causes, been perpetuated to the ultimate detriment of the proprietor who imposed them.

The rents of an estate can only be raised by inducing the ryots to cultivate the more valuable articles of produce, and to clear the extensive tracts of waste land, which are to be found in almost every zemindary in Bengal. It requires no local knowledge of the revenues of this country to decide, whether fixing the assessment, or leaving it liable to future increase, at the discretion of Government or its officers, will afford the greatest encouragement to the landholder to have recourse to these means for the improvement of his estate.

In support of the opinion which I expressed upon a former occasion respecting the large proportion of waste land in the Company's territories, I have annexed some extracts from the correspondence of the Collector in the Dacca Province, &c.; and whoever will take the trouble to consult the public proceedings will find there are many districts, both in Bengal and Behar, which are not better cultivated than those alluded to in letters of the above mentioned Collectors.

It does not appear to me that the regulations for the new settlement confirm all existing taxes, if, upon enquiry, they shall appear to be unauthorized, and of recent imposition; nor that the zemindars will be entitled to deductions upon the abolition of them.

With regard to the rates at which landed property transferred by public sale, in liquidation of arrears, and, it may be added, by private sale or gift, are to be assessed, I conceive that the new proprietor has a right to collect no more than what his predecessor was legally entitled to, for the act of transfer certainly gives no sanction to illegal impositions. I trust, however, that the due enforcement of the regulations for obliging the zemindars to grant pottahs to their ryots, as proposed by Mr. Shore, will soon remove this objection to a permanent settlement. For whoever becomes a proprietor of land after these pottahs have been issued, will succeed to the tenure, under the condition, and with the knowledge, that these pottahs are to be the rules by which the rents are to be collected from the ryots.

With respect to the talookdars, I could have wished that they had been separated entirely from the authority of the zemindars, and that they had been allowed to remit the public revenue assessed upon their lands immediately to the officers of Government, instead of paying it through the zemindar, to whose jurisdiction they are subjected. The last clause in the 16th Article of Mr. Shore's propositions, which directs that the lands of the talookdars shall be separated from the authority of the zemindars, and their rents be paid immediately to Government, in the event of the zemindars being convicted of demanding more from them than they ought to pay, will afford them some security from oppression.

When the demand of Government upon the zemindars is fixed, they can have no plea for levying an increase upon the talookdars, for I conceive the talookdars in general to have the same property in the soil as the zemindars, and that the former are to be considered as proprietors of lesser portions of land, paying their revenues to Government, through the medium of a larger proprietor, instead of remitting them immediately to the public treasury. The pernicious consequences which must result from affording to one individual an opportunity of raising the public revenue assessed upon the lands of another, at his own discretion and for his own advantage, are evident; and on this account, I was desirous that all proprietors of land, whether zemindars, talookdars, or choudries, should pay their rent immediately to the European Collector of the district, or other officer of Government, and be subject to the same general laws.

The number of names upon the rent-roll will add little to the business of the Collector of a district, provided that the sum to be paid by each proprietor of land is fixed.

In support of this opinion, I have annexed some Extracts from the Proceedings of the Committee of Circuit, the members of which must have been well acquainted with the customs and practices of the Mogul Government.

These Extracts afford convincing proofs of the proprietary rights of the inferior zemindars and talookdars; and that their being made to pay their rent through the superior zemindar of the district, was solely for the convenience of the Government, which found it less difficult to collect the rents from one principal zemindar than from a number of petty proprietors.

They further prove, that the zemindars who sold their lands to raise money for the liquidation of the public balances, disposed of all the rights which they possessed in them, as individuals; and that whatever authority they might exercise over them, after the sale, must have been virtually delegated to them by the Government, and not derived from themselves; and consequently that, in separating such talookdars from the jurisdiction of the zemindars, we should not have infringed the rights of the latter, but only deviated from a practice of the Mogul Government, from which that administration itself frequently departed; and whose conduct, in cases of this nature, should not, I conceive, be made the rule of ours, when found to be inconsistent with the good of the community.

The temporary reduction of the tribute of the Rajah of Benares, adduced by Mr. Shore to prove that the internal arrangements which we may find it necessary to make, after fixing the jumma payable by each zemindar, may hereafter oblige us to grant remissions, and thereby diminish the public revenues, does not appear to me a case in point.

The revenue received from Benares was at once raised from 22 to 40 lakhs of rupees. The Rajah being incapable of transacting his own affairs, the management of them was vested in a naib or deputy, whose rapacity and mal-administration, together with that of his officers, occasioned a general decline in the cultivation of the country, and consequently diminished its resources. The late reform of the customs and internal duties gave rise to a further temporary diminution of them.

The above are the principal causes which have occasioned the reduction in the revenues in Benares; but as it is obvious that similar causes will not exist either in Bengal or Behar, no arguments against fixing the assessment in these provinces can be founded upon this temporary deficiency in the revenues of Benares.

Still less can any just conclusions be drawn against fixing the demand of Government upon the lands, from the instance of the settlement made last year in Midnapore by the present Collectors. Mr. Shore observes, that if this assessment, formed upon documents of the greatest probable authenticity, had been declared permanent, the collection of it, if enforced, would have reduced many of the talookdars to distress, and some to ruin.—That, are we not as likely, or more so, to err, in the distribution of the assessment upon Collectorships, as upon the subdivisions of a particular district?

How far this reasoning is applicable to the settlement which we are about to conclude in the districts of Bengal, will appear from a reference to our Proceedings regarding Midnapore.

The canongoe of that district delivered in accounts, in which the gross produce of the country was estimated to be nearly double the amount of the revenue collected from it, on the account of Government. The supposed profits of the landholders, after making allowance for their charges in collecting the rents, were thought larger than what they were entitled to; and measures were taken to appropriate a part of them to the public use.

A considerable increase was accordingly imposed on the country, and the canongoe, through whom the accounts of the produce were obtained, pledged himself to become responsible, should the produce of any district fall short of his estimates.

It appears from the Collector's report, referred to in Mr. Shore's Minute of the 25th November last, that the collection of this settlement was made with much difficulty, and that

it was attended with great distress, entailing indigence on the renters of Mineehourah, Kookulpour, and Boccamootah; and that in the two last districts, after the mofussil assets had been completely collected, there remained a balance due from those mehals, which, it was pretty well known, was discharged by the sale of effects, and the mortgaging of rent-free lands.

The Collector further represented, that the canongoe's estimates had, in many places, proved fallacious,— that the assessment was too high,—and that there was an absolute necessity for lowering it in the ensuing year; he was accordingly directed to repair to Calcutta; and after the accounts which he brought with him were carefully examined, we judged it expedient to grant him a general authority to propose such remissions in the assessment as might appear to him necessary.

I confess, my expectations were never sanguine, that this settlement would be realized without distress to the numerous zemindars and talookdars, who are proprietors of the lands in Midnapore; and it is my opinion, that every attempt of this nature, to appropriate to the use of Government the profits of the landholders, allowing them only what, upon an arbitrary average estimate, is deemed sufficient for their maintenance and defraying the necessary charges of collecting the rents of their estates, will end in disappointment to Government, ruin to the proprietors of the soil, and in the establishment of mutual distrust.

The history of this settlement may be traced upon the public proceedings; and, I trust, that the state to which it has reduced many of the landholders, will suggest to the Court of Directors very strong arguments in favour of a permanent assessment, and prove to them the justness of Mr. Shore's own observation:—"That the mere admission of the rights of the zemindars, unless followed by the measures that will give value to it, will operate but little towards the improvement of the country;—that the demands of a foreign dominion, like ours, ought certainly to be more moderate than the impositions of the native rulers; and that to render the value of what we possess permanent, our demands ought to be fixed;—that, removed from the control of our own Government the distance of half the globe, every practicable restriction should be imposed upon the administration in India, without circumscribing its necessary power; and the property of the inhabitants be secured against the fluctuations of caprice, or the license of unrestrained control."

The principles which influenced the conclusion of this settlement, I am happy to say, have not found admission among those which are to regulate the formation of the future settlement of the districts in Bengal; and consequently, I trust that we shall not be subjected to the same disappointment which we have experienced in Midnapore.

Mr. Shore admits the general principle of the expediency of the total of the public assessment being increased at any future settlement; but the adoption of his proposition to correct periodically the inequalities that may appear in the proportions which are paid by the individual landholders, would, in my opinion, be attended with almost every discouragement and mischievous effect that the annual farming system could be supposed to produce.

No previous assurances, however solemn, could convince the zemindars that Government would, at the expiration of their leases, be contented with less than the highest rent that could be exacted from their lands; and even if experience should prove to them, that the intention of laying an additional assessment upon the most wealthy, went no further than to indemnify the public treasury for the losses that had been sustained by deficiencies in the rents of others, it would be vain to expect them to admit the justice of the principle that the industrious man should be taxed in proportion to the idleness and mismanagement of his neighbours; or, if they admitted it, to persuade them that the shares of those deficiencies had been fairly and impartially distributed; and I must confess that I do not think that a Government, or a set of Collectors, will never exist in this country, that would be qualified, at the end of a ten years' lease, to discriminate the acquisitions of fortune which had arisen from advantageous agreements, from those that had been produced by the superior economy and industry of other proprietors, and consequently, that to proportion a general assessment upon that principle, would be absolutely impracticable.

Although the zemindars and other landholders in this country are in general extremely improvident, and from their having been hitherto harassed with annual assessments, would no doubt receive a ten years' settlement with much satisfaction, yet short-sighted as they are, I cannot by any means admit that they would not clearly see a wide difference between a tenure of short duration and a perpetuity. But should it even happen, in the first moments of their joy, that they could lay aside all apprehensions of meeting with vexations in future settlements, they would infallibly recollect themselves, when their leases approached within three or four years of a conclusion; and as the same pernicious effects would then follow, that are now experienced annually, they would endeavour to give themselves an appearance of poverty, by concealing the wealth that they might have acquired, and to depreciate the value of their

lands, by neglecting their cultivation, in hopes of obtaining by those means more advantageous terms, at an ensuing settlement; and these consequences, by withdrawing the application of certain portions of stock and industry, must operate for a time to the general detriment of the State.

I trust, however, that it cannot be imagined that I would recommend that the proposed settlement should be made with a blind precipitation, or without our having obtained all the useful information that, in my opinion, can be expected of the real state and value of the different districts.

Twenty years have been employed in collecting information. In 1769, supervisors were appointed; in 1770 provincial councils were established; in 1772, a Committee of Circuit was deputed to make the settlement, armed with all the powers of the Presidency; in 1776, ameens were appointed to make a hustabood of the country; in 1781, the provincial councils of revenue were abolished, and Collectors were sent into the several districts, and the general Council and management of the revenues was lodged in a committee of revenue at Calcutta, under the immediate inspection of Government. Like our predecessors we set out with seeking for new information, and we have now been three years in collecting it. Voluminous reports have been transmitted by the several Collectors, on every point which was deemed of importance. The object of these various arrangements has been to obtain an accurate knowledge of the value of the lands and of the rules by which the zemindars collect the rents from the ryots.

The Collectors in Behar, not even excepting the two to whom Mr. Shore alludes as having declared it impracticable to make the proposed settlement, have already, with great appearance of benefit to the Company, and of advantage to the natives, made considerable progress in executing the instructions that they have received for making the ten years' settlement, conformable to the orders of the Court of Directors; and in every instance where it has been stated that further time was necessary to acquire a minute knowledge of the resources of any particular district, the Board has readily acquiesced in allowing a partial delay.

I shall certainly be no less inclined to recommend the observation of the same rule, during the progress of the settlement in Bengal and Orissa; and in those districts that, from long mismanagement, are evidently in a state of decline and disorder, I shall not only willingly agree to postpone the settlement for a twelve-month longer, but also assent to any modifications in it that may appear to be applicable to their present conditions. But after having adopted those and such other measures as may appear necessary, from the reports and explanations which may be laid before us by the different Collectors, whilst they are engaged in the execution of our instructions, I must declare that I am clearly of opinion that this Government will never be better qualified, at any given period whatever, to make an equitable settlement of the land revenue of these provinces; and that if the want of further information was to be admitted now, or at any other future period, as a ground for delaying the declaration of the permanency of the assessment, the commencement of the happiness of the people and of the prosperity of the country would be delayed for ever.

The question that has been so much agitated in this country, whether the zemindars and talookdars are the actual proprietors of the soil, or only officers of Government, has always appeared to me to be very uninteresting to them, whilst their claim to a certain percentage upon the rents of their lands has been admitted, and the right of Government to fix the amount of those rents at its own discretion, has never been denied or disputed.

Under the former practice of annual settlement, zemindars who have either refused to agree to pay the rents that have been required, or who have been thought unworthy of being entrusted with the management, have, since our acquisition of the Dewanny, been dispossessed in numberless instances, and their land held khas or let to a farmer; and when it is recollected that pecuniary allowances have not always been given to dispossessed zemindars in Bengal, I conceive that a more nugatory or delusive species of property could hardly exist.

On the other hand, the grant of these lands at a fixed assessment will stamp a value upon them hitherto unknown; and, by the facility which it will create of raising money upon them, either by mortgage or sale, will provide a certain fund for the liquidation of public or private demands, or prove an incitement to exertion and industry, by securing the fruits of those qualities in the tenure to the proprietor's own benefit.

The latter part of Mr. Shore's Minute recorded on the 21st December, commencing from the 27th paragraph, and from thence to the conclusion, relates to a settlement of four or five pergunnahs in the Collectorship of Behar Proper, concluded by the Collector, and confirmed by this Board on the——December 1788, from year to year, until the pleasure of the Court of Directors regarding it shall be known.

I shall hereafter record my sentiments on Mr. Shore's remarks on this settlement. I must observe, however, that they are not applicable to the general question now under discus-

sion. The parts of that settlement which Mr. Shore thinks exceptionable have not been adopted in the remainder of the Collector's districts, nor in the other Collectorship in Behar; nor is it proposed to introduce them in the settlement of Bengal.

I have thought it necessary to say thus much, lest from the subjects being so much blended in Mr. Shore's Minute, it should be supposed that his objections to the settlement of these pergunnahs in the Collectorship of Behar Proper, are equally applicable to the general plan of settlement for the Company's dominions at large.

I readily agree, however, that the Collector of Behar be called upon to answer the queries proposed by Mr. Shore; and that his reply be transmitted to the Court of Directors with such remarks upon it as we may hereafter think necessary.

I now come to the remaining point upon which I have differed with Mr. Shore, *viz.*, the expediency of taking into the hands of Government the collection of the internal duties on commerce, and allowing to the zemindars and others, by whom these duties have been hitherto levied, a deduction adequate to the amount which they now realize from them.

Mr. Shore's propositions for the settlement of Bengal will point out his sentiments regarding the collection of the internal duties; and I believe it was principally at my instance, that he acquiesced in the resolution for taking the collection of these duties into the hands of Government, in Behar, as entered on our proceedings of the 18th September last.

It was by my desire, also, that similar instructions were issued to the Collector of Midnapore.

To those who have adopted the idea, that the zemindars have no property in the soil, and that Government is the actual landlord, and that the zemindars are officers of Government removeable at pleasure, the question regarding the right of the zemindars to collect the internal duties on commerce would appear unnecessary. The committing the charge of the land revenues to one officer, and the collection of the internal duties to another, would to them appear only a deviation from the practice of the Mogul Government, and not an infringement of the rights of individuals; but what I have already said will be sufficient to show that these are not the grounds upon which I have recommended the adoption of the measure.

I admit the proprietary rights of the zemindars, and that they have hitherto held the collection of the internal duties; but this privilege appears to me so incompatible with the general prosperity of the country, that however it may be sanctioned by long usage, I conceive there are few who will not think us justifiable in resuming it.

It is almost unnecessary to observe, how much the prosperity of this country depends upon the removal of all obstructions, both to its internal and foreign commerce. It is from these resources only that it can supply the large proportions of its wealth, which are annually drained from it both by the Company and by individuals.

The rates by which the internal duties are levied, and the amount of them collected in each zemindary, have, as far as I have been able to trace, never been ascertained: when the lands of the zemindars have been leased out to farmers, these duties have been collected by them.

It is, I believe, generally allowed that no individual in a State can possess an inherent right to levy a duty on goods or merchandize purchased or sold within the limits of his estate, and much less upon goods passing along the public roads which lead through it. This is a privilege which the sovereign power alone is entitled to exercise, and nowhere else can it be lodged with safety. Every unauthorized exaction levied on the goods of a merchant, and every detention of them in their progress through the country, is a great public injury. The importation of foreign commodities and the exportation of our own, are alike obstructed; for accumulated exactions, by raising the price, diminish the consumption of the commodity, and the merchant is under the necessity either to give up his trade, or to go to other countries in search of the same goods. It cannot be expected that a zemindar will be influenced by these considerations, and much less a temporary farmer, whose only object can be to exact from the cultivators of the soil, as well as from merchants and traders, as much as he can compel them to pay.

The Court of Directors themselves appear to have been of this opinion, from the following paragraph of their letter of the 10th April 1771:—

"As we have reason to believe that many bazaars are held in the provinces without the authority of Government, and which must be an infringement of its right, a great detriment to the public collection, and a burden and oppression on the inhabitants; you will take care that no bazaars or gunges be kept up, but such as particularly belong to the Government. But in such bazaars and gunges, the duties are to be rated in such manner as their situations, and the flourishing state of the respective districts will admit."

And in the same letter they observe:—"Persuaded as we are, that the internal traffic of Bengal has received further checks from the duties which are levied, and the exactions which

are imposed at petty chowkies, we positively direct that no such chowkies be suffered to continue, on any pretence whatever, to impede the course of commerce from one part of the province to the other. It is necessary, however, that the nine general chowkies which have been established for collecting the duties payable to the Circar, should remain, and these only."

The chowkies stationed upon the banks of the rivers to collect duties on boats, on the part of the zemindars, were directed to be abolished, in consequence of the Company's orders, and adequate deductions were granted to the zemindars; but the duties levied at the hauts, gunges, and inland chowkies, were ordered to be continued, in the hands of the zemindars as formerly. The zemindars were also prohibited from collecting inland rahdarry duties, that is, duties upon goods not brought or sold within their zemindaries, but only passing through them. Notwithstanding this prohibition has been frequently repeated, our proceedings exhibit numerous instances of these rahdarry duties being levied by zemindars and farmers; and from opportunities which are afforded them, by having the collection of the authorized inland duties in their hands, I have every reason to believe that the practice is but too general. I understand that the Collector of Nuddea has lately abolished a very considerable number of chowkies, at which unauthorized duties were collected on the internal trade, by the officers of the zemindar, in defiance of the repeated orders of Government. If these interruptions to commerce are found to exist in a district almost in the neighbourhood of Calcutta, and under a vigilant Collector, it may be supposed that, in the more inland parts of the country, and under Collectors less active, that the evil prevails to a greater extent.

The inefficacy of the power of Government to restrain zemindars from these oppressive exactions, whilst they are allowed to possess the right of levying taxes of any kind upon commerce, has been long experienced in many shapes. It is only by the total resumption of this right, that such abuses can be prevented; and as the general interests of the community require that a regular system of taxation upon the internal trade of the country, should be established, we are justified by the constant practice of our own country, and that of other nations, in demanding from individuals, upon granting them a full compensation for their present value, a surrender of privileges which counteract so beneficial a measure.

Further benefits are to be derived from this arrangement, when the amount of the internal duties, the rates by which they are levied, and the articles subject to the payment of them are ascertained. Some may be increased, and others diminished or struck off, according as may be judged advisable; and in a course of time, as commerce and wealth increase, such regulations may be made in the duties on the internal trade, and the foreign imports and exports, as will afford a large addition to the income of the public, whenever its necessities may require it, without discouraging trade or manufactures, or imposing any additional rent on the lands.

Having stated such remarks on Mr. Shore's Minute as appeared to me necessary, I shall subjoin the following observations on the revenue system of this country, which may be found deserving of consideration:—

Although Government has an undoubted right to collect a portion of the produce of the lands to supply the public exigencies, it cannot, consistent with the principles of justice and policy, assume to itself a right of making annual or periodical valuations of the lands, and taking the whole produce, except such portion as it may think proper to relinquish to the proprietors for their maintenance, and for defraying the charges of managing their estates.

The Supreme power in every State must possess the right of taxing the subject, agreeably to certain general rules; but the practice which has prevailed in this country for some time past, of making frequent valuations of the lands, and where one person's estate has improved, and another's declined, of appropriating the increased produce of the former, to supply the deficiencies in the latter, is not taxation, but in fact a declaration that the property of the landholder is at the absolute disposal of Government. Every man who is acquainted with the causes which operate to impoverish or enrich a country, must be sensible that our Indian territories must continue to decline, as long as the practice is adhered to.

The maxim that equality in taxation is an object of the greatest importance, and that in justice all the subjects of a State should contribute as nearly as possible, in proportion to the income which they enjoy under its protection, does not prove the expediency of varying the demand of Government upon the lands; on the contrary, we shall find that, in countries in which this maxim is one of the leading principles in the imposition of taxes, the valuation of the land on which they are levied is never varied.

In raising a revenue to answer the public exigencies, we ought to be careful to interfere as little as possible in those sources from which the wealth of the subject is derived.

Agriculture is the principal source of the riches of Bengal; the cultivator of the soil furnishes most of the materials for its numerous manufactures. In proportion as agriculture declines, the quantity of these materials must diminish, and the value of them increase, and

consequently the manufactures must become dearer, and the demand for them be gradually lessened. Improvement in agriculture will produce the opposite effects.

The attention of Government ought therefore to be directed to render the assessment upon the lands as little burdensome as possible: this is to be accomplished only by fixing it. The proprietor will then have some inducement to improve his lands; and as his profits will increase in proportion to his exertions, he will gradually become better able to discharge the public revenue.

By reserving the collection of the internal duties on commerce, Government may at all times appropriate to itself a share of the accumulating wealth of its subjects, without their being sensible of it. The burden will also be more equally distributed; at present, the whole weight rests upon the landholders and cultivators of the soil.

Whereas the merchants and inhabitants of the cities and towns, the proprietors of rent-free lands, and, in general, all persons not employed in the cultivation of the lands, paying revenue to Government, contribute but little, in proportion to their means, to the exigencies of the State. It is evident, therefore, that varying the assessment on the lands is not the mode of carrying into practice the maxim, that all the subjects of a State ought to contribute to the public exigencies, in proportion to their incomes; and that other means must be employed for effecting this object.

In case of a foreign invasion, it is a matter of the last importance, considering the means by which we keep possession of this country, that the proprietors of the lands should be attached to us from motives of self-interest. A landholder, who is secured in the quiet enjoyment of a profitable estate, can have no motive for wishing for a change. On the contrary, if the rents of his lands are raised, in proportion to their improvements,—if he is liable to be dispossessed, should he refuse to pay the increase required of him,—or if threatened with imprisonment or confiscation of his property, on account of balance due to Government, upon an assessment which his lands were unequal to pay, he will readily listen to any offers which are likely to bring about a change that cannot place him in a worse situation, but which hold out to him hopes of a better.

Until the assessment on the lands is fixed, the constitution of our internal Government in this country will never take that form which alone can lead to the establishment of good laws, and ensure a due administration of them. For whilst the assessment is liable to frequent variation, a great portion of the time and attention of the Supreme Board, and the unremitted application of the Company's servants of the first abilities, and most established integrity will be required to prevent the landholders being plundered, and the revenues of Government diminished, at every new settlement; and powers and functions, which ought to be lodged in different hands, must continue as at present, vested in the same persons; and whilst they remain so united, we cannot expect that the laws which may be enacted for the protection of the rights and property of the landholders and cultivators of the soil, will ever be duly enforced.

We have, by a train of the most fortunate events, obtained the dominion of one of the most fertile countries on the face of the globe, with a population of mild and industrious inhabitants, perhaps equal to, if not exceeding in number, that of all the other British possessions put together.

Its real value to Britain depends upon the continuance of its ability to furnish a large annual investment to Europe; to give considerable assistance to the treasury at Canton; and to supply the pressing and extensive wants of the other Presidencies.

The consequences of the heavy drains of wealth, from the above causes, with the addition of that which has been occasioned by the remittance of the private fortunes, have been for many years past, and are now severely felt, by the great diminution of the current specie, and by the langour which has thereby been thrown upon the cultivation and the general commerce of the country.

A very material alteration in the principles of our system of management, has therefore become indispensably necessary, in order to restore this country to a state of prosperity, and to enable it to continue to be a solid support to the British interests and power, in this part of the world.

We can only accomplish this desirable object, by devising measures to rouse and increase the industry of the inhabitants; and it would be in vain to hope that any means but those of holding forth prospects of private advantage to themselves, could possibly succeed to animate them to exertion.

I am sorry to be obliged to acknowledge it, but it is a truth too evident to deny, that the land proprietors throughout the whole of the Company's provinces are in a general state of poverty and depression.

I cannot even except the principal zemindars from this observation; and it was not without concern, that I saw it verified very lately, in one instance, by the Rajah of Burdwan, who pays a yearly rent of upwards of £400,000 to Government, having allowed some of his most valuable lands to be sold, for the discharge of an inconsiderable balance due to Government.

The indolent and debased character of many of the zemindars, must no doubt have contributed to the ruin of their circumstances; and though I am afraid the cases are but few, yet I conceive it to be possible that there may be some instances, in which the poverty that is pleaded may be only pretended.

Either supposition must, however, reflect some discredit upon our system of management; for it would imply that we have been deficient in taking proper measures to incite the zemindars to a line of conduct, which would produce advantage to themselves, or, that if they have acquired wealth, their apprehension of our rapacity induces them to conceal it.

We are therefore called upon to endeavour to remedy evils by which the public interests are essentially injured; and by granting perpetual leases of the lands at a fixed assessment, we shall render our subjects the happiest people in India; and we shall have reason to rejoice at the increase of their wealth and prosperity, as it will infallibly add to the strength and resources of the State.

I therefore propose that the letter from the Board of Revenue, with the reports of the Collectors in Bengal, respecting the ten years' settlement, and Mr. Shore's Minute and Proposition, delivered in for record in June last, be now entered upon the Proceedings.

That a Copy of Mr. Shore's Propositions (the articles relating to the gunges excepted), with such of the alterations contained in our Resolutions of the 25th November last, for the settlement of Midnapore, as are applicable to the districts in general, be transmitted to the Board of Revenue; and that they be directed to proceed, without delay, to form the ten years' settlement in Bengal, agreeably to the rules and prescriptions therein laid down.

That the Board of Revenue be directed to notify to the landholders, that the settlement, if approved by the Court of Directors, will become permanent, and no alteration take place at the expiration of the ten years.

That the Board of Revenue be further directed to issue the same instructions to the Collectors in Bengal, for the separation of the gunges, bazars, and hauts held within them, as have been transmitted to the Collectors of Behar and the Collector of Midnapore. (*Pages 609—627.*)

VII.—Extract from a letter from the Court of Directors, dated the 19th September 1792, sanctioning the permanent settlement.

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18. It is also very agreeable to find that the settlement has in general been made with the landholders, or on their behalf; we would hope that by this time it is extended throughout the districts, all the arrangements respecting it completed, and the whole in a train of encouraging performance.

19. We shall wait with impatience for the sequel of your advices on this interesting subject, and in the meantime have given our sentiments upon the rules for the decennial settlements and the actual formation of it so far as that is known to us. We proceed to speak more particularly to several questions of importance which arose in the course of that work, and upon which our decision or opinion is required; they were involved in your proceedings with the main subject, but we have thought it more convenient to separate them, and first, following the subject to its close, to give a distinct consideration to the most material of those points which came into discussion in its progress.

20. One of the earliest of these was the landed rights of the zemindars. In former despatches we have, on different occasions, conveyed to you our sentiments on that point, though we have also stated that we felt the materials before us to be insufficient for forming a decisive opinion. On the fullest consideration, we are inclined to think that whatever doubts may exist with respect to their original character, whether as proprietors of land or collectors of revenue, or with respect to the changes which may in process of time have taken place in their situation, there can at least be little difference of opinion as to the *actual* condition of the zemindars under the Mogul Government. Custom generally gave them a certain species of hereditary occupancy, but the Sovereign nowhere appears to have bound himself by any law or compact not to deprive them of it, and the rents to be paid by them remained always to be fixed by his arbitrary will and pleasure, which were constantly exercised upon this object. If considered therefore as a right of property, it is very imperfect and very precarious, having not at all, or

but in a very small degree, those qualities that confer independence and value upon the landed property of Europe. Though such be our ultimate view of this question, our originating a system of fixed equitable taxation will sufficiently shew that our intention has not been to act upon the high claims of Asiatic despotism. We are, on the contrary, for establishing real, permanent, valuable landed rights in our provinces; for conferring that right upon the zemindars; but it is just that the nature of this concession should be known, and that our subjects should see they receive from the enlightened principles of a British Government what they never enjoyed under the happiest of their own.

21. The amount of present resources of our provinces has been another principal subject of discussion, and it is certainly deserving of the most attentive consideration in the contemplation of a permanent settlement. We have found two very different views of it, one given by Mr. James Grant in his analysis of the Revenues of Bengal, and another by Mr. Shore in his valuable Minute of 18th June 1789, already quoted. We willingly take this opportunity of repeating, that the work of Mr. Grant appears to us a curious and interesting one, evincing both extraordinary disquisitory powers, and a laudable application of them to the affairs of the Company, whereby he has at length effected that which ought to have been performed at the period of our accession to the Dewannee; for one of the most proper objects of enquiry at that juncture certainly was the real ability of the districts, and their financial history upon these subjects. As far as the native administration is concerned, Mr. Grant's able and ingenious researches have thrown more light than all the collected informations that preceded them, and they may have been of considerable use in enlarging and amplifying discussions that were important in proceeding to a permanent settlement. But we must, upon the fullest consideration, disapprove entirely of the Mogul principle of taxation, the division of the actual produce between the Sovereign and the immediate cultivator of the soil, which under various modifications has continued to be the basis of practice unto the present time: we are convinced there are evils inherent in this mode, greatly obstructive of national improvement and happiness. We are, moreover, by no means satisfied that our provinces have now resources equal to those which they possessed even when ceded to us; we wish indeed, that we saw no reason to apprehend the contrary. From the best judgment we can form, the natural calamities to which the country has been subjected, joined to other circumstances, have greatly altered its state, which at present affords no external signs of abounding wealth, nor any probable source of large increase, except the alienated lands, which remain a subject for investigation. We do not mean to enter on that article at present farther than to observe, that the outlines of the plan suggested by Lord Cornwallis, in his letter of 15th August 1790, appear to us to be formed with great wisdom and propriety, and we shall forbear expressing our sentiments upon it, more particularly, till we have received the plan itself in detail. In giving our opinion on the amount of the settlement, we have been not a little influenced by the conviction that true policy requires us to hold this remote dependent dominion under as moderate a taxation as will consist with the ends of our Government. But in any case, after all the changes that thirty years nearly have produced and confirmed, we must be of opinion that it would be vain to attempt to place things now upon the same footing whereon they stood at any distant period, or to establish a reform by local scrutinies, which would be endless as well as odious. We see hence no standard or guide for fixing our demand, but the experience of a series of past years, joined to such personal and official informations as are now procurable. These informations, upon an occasion so singularly interesting, we certainly could have wished to have been still more intelligent and full than they appear to be; but finding that in this way of proceeding the amount of revenue, which, after due consideration of the usual exigencies of our Government, and of the reserve proper for extraordinary services, we had fixed in our general letter of 12th April 1786, may be obtained, we do not wish to expose our subjects to the hazard of oppressive practices by requiring more.

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25. In reviewing your regulations respecting the persons with whom settlements were to be concluded, we observe that in certain instances you have been under the necessity of making agreements with farmers, but we do not find that in this instance you have formed any decision how these lands are disposed of at the expiration of the period for which they were farmed, and we wait to learn your sentiments on this point. Our opinion at present is, that in the instances where the landholders have at present been excluded, the first opportunity would nevertheless be taken of again giving to them or their heirs the option of being restored to their lands according to the general principles now to be established. Some caution however may be necessary, in order to avoid giving encouragement to those who may have declined entering into the agreement at present, in order to profit by the embarrassment of Government.

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28. We have attended to your proceedings upon another question which grew out of this determination, whether such talooks as were, by a specific clause in the title deeds for them, stipulated to continue inseparable from the zemindary should, nevertheless, come under the new regulation? It does not appear to us that a clause of that nature could in general have had the sanction of the Sovereign or his Dewan; and we must think that wherever such sanction was wanting, the whole transaction rests upon no other legal validity than what prescription may give it. We shall thus not only be of opinion with the Governor General, that such an unauthorized clause contained in itself an irregular assumption on the part of the zemindar, but that in fact the title conveyed by him was insufficient in any other view than as a mere pottah. If prescription, however, is supposed to cure this original defect on one side, it may also be pleaded on the other in favour of the unwarranted clause; and thus the question may be regarded as a relative branch of that much more comprehensive one respecting lands illegally alienated.

29. If our views of this question relative to taluks of the description above stated be just, that the substance of the transaction, or the grant itself was legal, but with the superaddition of an illegal clause, then it remains to be considered whether this clause should vitiate the grant which prescription may have confirmed, or Government give up its right, which is disregarded in the clause. On this point we do not feel ourselves prepared to give any positive instruction, and, indeed, whatever might be our opinion upon it, we should feel ourselves precluded from enforcing, during the period of the Decennial Settlement, any measure contrary to the decision which you have already announced upon it. But considering the doubtful state of this question, we are inclined to think that if it could be settled to the satisfaction both of the zemindars and the holders of the talooks, the most equitable and desirable arrangement would be, that the latter should be completely separated from the zemindary, agreeing in their part to pay, as a consideration to the zemindar, for a limited term, such a moderate annual sum over and above the jumma paid to Government, as might, under all the circumstances, be thought reasonable. You will observe that these sentiments are grounded upon the policy of taking every fair occasion of dividing the great masses of that permanent property which will be now established, into fewer hands, than those among whom it was distributed while it existed upon different principles. And, perhaps, if the zemindars could feel all the value of the rights and conditions which under this settlement they will acquire, they would be willing to secure them by the surrender of claims less questionable than those of which we have been speaking. What we have now stated will in part apply also to an object which is important in another point of view, and which we therefore wish to take notice of; we mean that of the portions of lands in the possession of different proprietors which are at present let uncultivated. If the different proprietors should be allowed to avail themselves exclusively of the whole benefit to be derived from these lands in the improved state of cultivation, which the new system has an evident tendency to promote, such a circumstance may, in process of time, add very considerably to the value of possessions already too large. It is besides to be considered, that if it can be effected without counteracting the principal object of encouraging industry, Government may fairly expect in due time some reasonable participation in the wealth arising from such a source; and we observe that Mr. Shore seems to be of opinion, that if such a participation were only to take place gradually, and at a certain period after the new lands have been put in cultivation, it would form no obstacle to improvement. At the same time, this is a subject on which we do not mean to give any fixed opinion; and we are aware that it is connected with points of considerable delicacy.

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45. From the materials which have been transmitted, we are led to believe that the situation of the ryots varies in different districts according to local manners, customs, or particular agreements; and it appears as if in some instances the right of ryots of different descriptions, though in the same district, was considered as more or less permanent and secure. The application therefore of any general principles must be guided by minute local investigation, and we shall expect particular regulations, adapted to all the different circumstances, to be prepared, and finally submitted to our consideration. In looking to the ultimate situation of the provinces under our Government, we cannot indeed but hope, that under the system which we now propose, the possessors of lands will gradually learn from experience that their own interests are permanently connected with the security and comfort of the cultivators of the soil, and that the time will come when the advantage of every class of the community will be best promoted by leaving to every man the care and management of his own property.

46. But, as so great a change in habits and situation can only be gradual, the interference of Government may for a considerable period be necessary to prevent the landholders from making use of their own permanent possession for the purpose of exaction and oppression; we therefore wish to have it distinctly understood that, while we confirm to the landholders the

possession of the districts which they now hold, and subject only to the rent now settled, and while we disclaim any interference with respect to the situation of the ryots, or the sums paid by them, with any view to any addition of revenue to ourselves, we expressly reserve the right, which clearly belongs to us as sovereigns, of interposing our authority in making from time to time all such regulations as may be necessary to prevent the ryots being improperly disturbed in their possessions, or loaded with unwarrantable exactions. A power exercised for the purposes we have mentioned, and which has no view to our own interests, except as they are connected with the general industry and prosperity of the country, can be no object of jealousy to the landholders, and instead of diminishing will ultimately enhance the value of their proprietary rights. Our interposition, where it is necessary, seems also to be clearly consistent with the practice of the Mogul Government, under which it appeared to be a general maxim that the immediate cultivator of the soil, duly paying his rent, should not be dispossessed of the land he occupied. This necessarily supposes that there were some measures and limits by which the rent could be defined, and that it was not left to the arbitrary determination of the zemindar, for otherwise such a rule would be nugatory; and in point of fact, the original amount seems to have been annually ascertained and fixed by the act of the Sovereign.

47. Having thus explained our opinions on the several points which have arisen, we conclude by stating to you, that important and arduous as we consider the measure of a perpetual settlement, and irreversible as it is in its nature, we think ourselves bound, from considerations of duty to all the interests which it concerns, to proceed to it. No conviction is stronger upon our minds than that instability in the mode of administering our revenues has had the most prejudicial effect upon the welfare of the provinces, upon our affairs, and the character of our government; and of all the generated evils of unsettled principles of administration, none has been more baneful than frequent variation in the assessment. It has reduced everything to temporary expedient, and destroyed all enlarged views of improvement. Impolitic as such a principle must be at all times, it is particularly so with respect to a dependant country paying a large annual tribute, and deprived of many of its ancient supports. Such a country requires especially the aid of a productive principle of management, and it is with solid satisfaction that we look to the great resources which it yet has in its uncultivated, though excellent, lands. But these lands must be opened; and what have all the attempts of nearly thirty years to this end produced? What are we to expect from still leaving room for the principle of fluctuation which has prevailed during that period, though we may profess to place succeeding change at a remoter distance? Long leases with a view to the equal gradual establishment of a permanent system, though recommended upon the ground of safety, we must think, would still continue in a certain degree the evils of the former practice; periodical corrections in the assessment would be in effect of the nature of a general increase, and tend to defray the hope of a permanent system, with the confidence of exertion it is calculated to inspire. Had such a system been adopted twenty years ago, and fairly followed, it is not to be doubted that the produce, manufactures, and commerce of the country would at this time have been in a more flourishing state than they are, and the people, sensible of a new order of things, of privileges and prosperity unenjoyed before, would have risen to their character, and felt real attachment to the Government from which those blessings were derived. That Government too, instead of being so much occupied as it has been in all time past, by the degrading struggle perpetually subsisting throughout the country for taxes and rents, would, as our Governor General has already suggested, have had leisure to turn its cares to other functions of the ruling power, to the internal regulation of the community, the establishment of wholesome laws, and the due administration of them. The principle therefore which would have laid the foundation of this appears the only one still to be adopted; it places the security of the Company's revenue on the only basis which we can discover to be a solid one, *the growing prosperity of the country*; and hopeless alike of better lights than those already attained, and of an administration more fitted effectually to establish a great reform than that of which Lord Cornwallis is the head, we must be of opinion with his Lordship, that to delay the introduction of it, supposing always the first standard settlement properly formed, would be to postpone the commencement of the prosperity and the happiness of the country.

48. Upon that settlement, so far as it has yet come before us, either accomplished or in prospect, we have already given our opinion, and we therefore now direct you, if no new circumstance of importance has occurred to retard its natural operation, or to threaten the defeat of our reasonable expectation from it, to declare it, wherever it has been made with or on behalf of the landholders, perpetual. In order to leave no room for our intentions being at any time misunderstood, we direct you to be accurate in the terms in which our determination is announced, and you will be careful to have it translated and circulated in the same manner as you have directed with respect to your own Code of Regulations. Having left it to your discretion to

decide on the measures to be adopted relative to the waste lands, you will of course determine whether any reserve should be made in this declaration with a view to that object, and you will in a particular manner be cautious so to express yourselves as to leave no ambiguity as to our right to interfere from time to time, as it may be necessary, for the protection of the ryots and subordinate landholders, it being our intention in the whole of this measure effectually to limit our own demand; but not to depart from our inherent right, as sovereigns, of being the guardians and protectors of every class of persons living under our Government. We are not aware that we have omitted a determination upon any article necessary or important to your procedure to this last step, and we shall be happy that Lord Cornwallis, who has done so much in this arduous work, sees no reason to deny himself the happiness of announcing a new constitution to so many millions of Asiatic subjects of Great Britain.

VIII.—Extracts from the Bengal Regulations.

Section 1.—The following articles of the proclamation relative to the limitation of the public demand upon the lands, addressed by the Governor General in Council to the zemindars, independent talookdars, and other actual proprietors of land paying revenue to Government, in the provinces of Bengal, Behar, and Orissa, are hereby enacted into a Regulation, which is to have force and effect from the 22nd March 1793, the date of the proclamation. Regulation I of 1793.

PROCLAMATION.

2. Art. I.—In the original Regulations for the decennial settlement of the public revenues of Bengal, Behar, and Orissa, passed for those provinces respectively on the 18th September 1789, the 25th November 1789, and the 10th February 1790, it was notified to the proprietors of land, with or on behalf of whom a settlement might be concluded, that the jumma assessed upon their lands under those Regulations would be continued after the expiration of the ten years, and remain unalterable for ever, provided such continuance should meet with the approbation of the Honourable Court of Directors for the affairs of the East India Company, and not otherwise.

3. Art. II.—The Marquis Cornwallis, Knight of the Most Noble Order of the Garter, Governor General in Council, now notifies to all zemindars, independent talookdars, and other actual proprietors of land paying revenue to Government, in the provinces of Bengal, Behar, and Orissa, that he has been empowered by the Honourable Court of Directors for the affairs of the East India Company to declare the jumma, which has been, or may be assessed upon their lands under the Regulations above mentioned, fixed for ever.

4. Art. III.—The Governor General in Council accordingly declares to the zemindars, independent talookdars, and other actual proprietors of land, with or on behalf of whom a settlement has been concluded under the Regulations above mentioned, that at the expiration of the term of the settlement, no alteration will be made in the assessment which they have respectively engaged to pay, but that they, and their heirs and lawful successors, will be allowed to hold their estates at such assessment for ever.

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7. Art. VI.—It is well known to the zemindars, independent talookdars, and other actual proprietors of land, as well as to the inhabitants of Bengal, Behar, and Orissa, in general, that from the earliest times until the present period, the public assessment upon the lands has never been fixed, but that, according to established usage and custom, the rulers of these provinces have from time to time demanded an increase of assessment from the proprietors of land; and that, for the purpose of obtaining this increase, not only frequent investigations have been made to ascertain the actual produce of their estates, but that it has been the practice to deprive them of the management of their lands, and either to let them in farm, or to appoint officers on the part of Government to collect the assessment immediately from the ryots. The Honourable Court of Directors, considering these usages and measures to be detrimental to the prosperity of the country, have, with a view to promote the future ease and happiness of the people, authorized the foregoing declarations; and the zemindars, independent talookdars, and other actual proprietors of land, with or on behalf of whom a settlement has been, or may be concluded, are to consider these orders fixing the amount of the assessment as irrevocable, and not liable to alteration by any persons whom the Court of Directors may hereafter appoint to the administration of their affairs in this country.

The Governor General in Council trusts that the proprietors of land, sensible of the benefits conferred upon them by the public assessment being fixed for ever, will exert themselves in the cultivation of their lands, under the certainty that they will enjoy exclusively

the fruits of their own good management and industry, and that no demand will ever be made upon them, or their heirs or successors, by the present or any future Government, for an augmentation of the public assessment in consequence of the improvement of their respective estates.

To discharge the revenues at the stipulated periods without delay or evasion, and to conduct themselves with good faith and moderation towards their dependent talookdars and ryots, are duties at all times indispensably required from the proprietors of land, and a strict observance of those duties is now more than ever incumbent upon them, in return for the benefits which they will themselves derive from the orders now issued. The Governor General in Council therefore expects that the proprietors of land will not only act in this manner themselves towards their dependent talookdars and ryots, but also enjoin the strictest adherence to the same principles, in the persons whom they may appoint to collect the rents from them. He further expects that without deviating from this line of conduct, they will regularly discharge the revenue in all seasons; and he accordingly notifies to them, that, in future, no claims or applications for suspensions or remissions, on account of drought, inundation, or other calamity of season, will be attended to, but that in the event of any zemindar, independent talookdar, or other actual proprietor of land, with or on behalf of whom a settlement has been or may be concluded, or his or her heirs or successors failing in the punctual discharge of the public revenue which has been, or may be assessed upon their lands under the abovementioned Regulations, a sale of the whole of the lands of the defaulter, or such portion of them as may be sufficient to make good the arrear, will positively and invariably take place.

8. Art. VII.—To prevent any misconstruction of the foregoing articles, the Governor General in Council thinks it necessary to make the following declarations to the zemindars, independent talookdars, and other actual proprietors of land.

First. It being the duty of the ruling power to protect all classes of people, and more particularly those who from their situation are most helpless, the Governor General in Council will, whenever he may deem it proper, enact such Regulations as he may think necessary for the protection and welfare of the dependent talookdars, ryots, and other cultivators of the soil; and no zemindar, independent talookdar, or other actual proprietor of land, shall be entitled on this account to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay.

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Regulation II of 1793.

Section 1. * * * * To effect these improvements in agriculture, which must necessarily be followed by the increase of every article of produce, has accordingly been one of the primary objects to which the attention of the British Administration has been directed, in its arrangements for the internal government of these provinces. As being the two fundamental measures essential to the attainment of it, the property in the soil has been declared to be vested in the landholders, and the revenue payable to Government from each estate has been fixed for ever. These measures have at once rendered it the interest of the proprietors to improve their estates, and given them the means of raising the funds necessary for that purpose. The property in the soil was never before formally declared to be vested in the landholders, nor were they allowed to transfer such rights as they did possess, or raise money upon the credit of their tenures, without the previous sanction of Government. With respect to the public demand upon each estate, it was liable to annual or frequent variation at the discretion of Government. The amount of it was fixed upon an estimate formed by the public officers of the aggregate of the rents payable by the ryots or tenants for each begah of land in cultivation, of which after deducting the expenses of collection, ten-elevenths were usually considered as the right of the public, and the remainder the share of the landholder. Refusal to pay the sum required of him was followed by his removal from the management of his lands, and the public dues were either let in farm or collected by an officer of Government, and the abovementioned share of the landholder, or such sum as special custom, or the orders of Government, might have fixed, was paid to him by the farmer or from the public treasury. When the extension of cultivation was productive only of a heavier assessment, and even the possession of the property was uncertain, the hereditary landholder had little inducement to improve his estate, and monied men had no encouragement to embark their capital in the purchase or improvement of land, whilst not only the profit, but the security for the capital itself was so precarious. The same causes, therefore, which prevented the improvement of land depreciated its value.

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Regulation VIII of 1793.

Section 52.—The zemindar, or other actual proprietor of land, is to let the remaining lands of his zemindari or estate, under the prescribed restrictions, in whatever manner he may think proper; but every engagement contracted with under-farmers shall be specific as to the

amount and conditions of it; and all sums received by any actual proprietor of land or any farmer of land of whatever description, over and above what is specified in the engagements of the persons paying the same, shall be considered as extorted, and be repaid with a penalty of double the amount. The restrictions prescribed and referred to in this section are the following:—

53. No person contracting with a zemindar, independent talookdar, or other actual proprietor, or employed by him in the management of the collections, shall be authorized to take charge of the lands or collections without an amilnamah, or written commission, signed by such zemindar, independent talookdar, or other actual proprietor.

54. The impositions upon the ryots, under the denomination of abwab, mhatoot, and other appellations, from their number and uncertainty having become intricate to adjust, and a source of oppression to the ryots, all proprietors of land and dependent talookdars shall revise the same, in concert with the ryots, and consolidate the whole with the assul into one specific sum. In large zemindaries or estates, the proprietors are to commence this simplification of the rents of their ryots in the pergunnahs where the impositions are most numerous, and to proceed in it gradually till completed; but so that it be effected for the whole of their lands by the end of the Bengal year 1198 in the Bengal districts, and of the Fussily and Willaity year 1198 in the Behar and Orissa districts, these being the periods fixed for the delivery of pottahs, as hereafter specified.

55. No actual proprietor of land, or dependent talookdar, or farmer of land, of whatever description, shall impose any new abwab or mhatoot upon the ryots, under any pretence whatever. Every exaction of this nature shall be punished by a penalty equal to three times the amount imposed; and if, at any future period, it be discovered that new abwab or mhatoot have been imposed, the person imposing the same shall be liable to this penalty for the entire period of such impositions.

56. It is expected that, in time, the proprietors of land, dependent talookdars, and farmers of land, and the ryots, will find it for their mutual advantage to enter into agreements in every instance for a specific sum for a certain quantity of land, leaving it to the option of the latter to cultivate whatever species of produce may appear to them likely to yield the largest profit. Where, however, it is the established custom to vary the pottah for lands according to the articles produced thereon, and while the actual proprietors of land, dependent talookdars, or farmers of land, and ryots in such places, shall prefer an adherence to this custom the engagements entered into between them are to specify the quantity of land, species of produce, rate of rent, and amount thereof, with the term of the lease, and a stipulation that, in the event of the species of produce being changed, a new engagement shall be executed for the remaining term of the first lease, or for a longer period if agreed on; and in the event of any new species being cultivated, a new engagement with the like specification and clause, is to be executed accordingly.

57. *First.*—The rents to be paid by the ryots, by whatever rule or custom they may be regulated, shall be specifically stated in the pottah, which, in every possible case, shall contain the exact sum to be paid by them.

Second.—In cases where the rate only can be specified, such as where the rents are adjusted upon a measurement of the lands after cultivation or on a survey of the crop, or where they are made payable in kind, the rate and terms of payment and proportion of the crop to be delivered, with every condition, shall be clearly specified.

58. Every zemindar, independent talookdar, or other actual proprietor of land, and every dependent talookdar, shall prepare the form of a pottah or pottahs conformably to the rules above described, and adapted to the circumstances of his estate or talook; and after obtaining the collector's approbation of it (which approbation shall be signified by such officer superscribing the form with his name and official appellation), he is to register a copy of the form or forms in the Dewanny Adawlut of the zillah, and to deposit a copy in each of the principal cutcheries in his estate or talook. Every ryot shall be entitled to receive corresponding pottahs, on application, and no pottahs of any other form shall be hereafter held valid.

59. A ryot, when his rent has been ascertained and settled, may demand a pottah from the actual proprietor of land, dependent talookdar or farmer, of whom he holds his lands, or from the person acting for him: and any refusal to deliver the pottahs, upon being proved in the court of Dewanny Adawlut of the zillah, shall be punished by the court, by a fine proportioned to the expense and trouble of the ryot in consequence of such refusal. Actual proprietors of land, dependent talookdars, and farmers, are also required to cause a pottah for the adjusted rent to be prepared and tendered to the ryot, either granting the same themselves, or intrusting their agents to grant the same. No farmer, however, without special permission from the proprietor of the lands, or (if the lands form part of a dependent talook) the dependent talookdar,

shall grant a pottah extending beyond the period of his own lease; nor shall any agent grant a pottah without authority from the proprietor or dependent talookdar or the manager of disqualified proprietors.

60. First.—All leases to under-farmers and ryots made previous to the conclusion of the settlement, and not contrary to any Regulation, are to remain in force until the period of their expiration, unless proved to have been obtained by collusion, or from persons not authorized to grant them.

Second.—No actual proprietor of land or farmer, or persons acting under their authority, shall cancel the pottahs of the khood kasht ryots, except upon proof that they have been obtained by collusion; or that the rents paid by them within the last three years have been reduced below the rate of the nirkbundy of the pergunnah; or that they have obtained collusive deductions; or upon a general measurement of the pergunnah for the purpose of equalizing and correcting the assessment. The rule contained in this clause is not to be considered applicable to Behar.

61. The proprietors of estates, and the dependent talookdars and farmers of land in Bengal, are allowed until the end of the Bengal year 1198, and those in Behar and Orissa until the end of the Fussily and Willaity year 1198, to prepare and deliver pottahs to the ryots, in conformity to the preceding rules; but after the expiration of the year 1198 no engagements for rent, contrary to those ordered, are to be held valid; and in the event of any claims being preferred by proprietors of estates, or dependent talookdars, farmers, or ryots, on engagements wherein the consolidation of the assul, abwab, &c., shall appear not to have been made, they are to be non-suited, with costs.

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Regulation XIV of 1793.

Section 6. * * * The ameen is to collect according to the engagements that may subsist between the defaulter and his dependent talookdars, under-farmers, and ryots, and shall not make any alterations whatever in such engagements, or exact more than the amount specified in them, whether they be conformable to Regulation XLIV. 1793, or not. The ameen shall be liable to a prosecution in the Court of Dewanny Adawlut of the zillah for any alteration or infringement of such engagements in opposition to this section. In cases in which no engagements may exist between the defaulter and his dependent talookdars or ryots, the ameen is to collect from them according to the established rates and usages of the pergunnah.

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Regulation XIX of 1793.

Section 1.—By the ancient law of the country, the ruling power is entitled to a certain proportion of the produce of every begah of land (demandable in money or kind, according to local custom), unless it transfers its right thereto for a term or in perpetuity, or limits the public demand upon the whole of the lands belonging to an individual, leaving him to appropriate to his own use the difference between the value of such proportion of the produce and the sum payable to the public, whilst he continues to discharge the latter.

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Regulation XLIV of 1793

Section 1.—The public demand upon the estates of the proprietors of lands with whom a settlement has been or may be concluded under the original regulations for the decennial settlement having been declared fixed for ever, it is to be apprehended that many proprietors, either from improvidence, ignorance, or with a view to raise money, or from other causes or motives, may be induced to dispose of dependent talooks to be held at a reduced jumma, or fix the jumma of the dependent talooks now existing in their respective estates at an under-rate, or let lands in farm or grant pottahs for the cultivation of land at a reduced rent for a long term or in perpetuity. Such engagements, if held valid, would leave it in the power of weak, improvident, or ill-disposed proprietors, to render their property of little or no value to their heirs; promote vice and injustice; occasion a permanent diminution of the resources of Government arising from the lands, in the event of the rent or revenue reserved by such proprietors being insufficient for the discharge of the amount of the public demand upon their estates; be an abuse of the great and lasting benefit which has been conferred upon the landholders by the possession of their lands being secured to them in perpetuity at a fixed assessment; and, moreover, be repugnant to the ancient and established usages of the country, according to which the dues of Government from the lands (which consist of a certain proportion of the annual produce of every begah of land, demandable according to the local custom in money or kind, unless Government has transferred its right to such proportion to individuals for a term or in perpetuity, or fixed the public demand upon the whole estate of a proprietor of land, leaving him to appropriate to his own use the difference between the value of such proportion of the produce and the sum payable to the public so long as he continues to discharge the latter), are unalienable without its express sanction. It is, at the same time, essential that proprietors of land should

have a discretionary power to fix the revenue payable by their dependent talookdars, and to grant leases, or fix the rents of their lands for a term sufficient to induce their dependent talookdars, under-farmers, and ryots, to extend and improve the cultivation of their lands, and that such engagements should be held inviolable in all cases except where they may interfere with or affect in any shape the primary and indefeasible rights of Government. Upon the above grounds, and as the proprietors of land, previous to the decennial settlement being declared perpetual, were not entitled to enter into any engagements with their dependent talookdars, under-farmers, or ryots, for a period extending beyond the term of their own engagements with the public, the Governor General in Council has enacted as follows:

2. No zemindars, independent talookdars, or other actual proprietors of land, nor any persons on their behalf, shall dispose of a dependant talook to be held at the same or at any jumma, or fix at any amount the jumma of an existing dependant talook for a term exceeding ten years, nor let any lands in farm, nor grant pottahs to ryots or other persons for the cultivation of lands, for a term exceeding ten years. Nor shall it be lawful for any zemindar, independent talookdar, or other actual proprietor of land who may have entered into an engagement with any dependant talookdar, fixing the jumma of his talook for a term not exceeding ten years, or let any lands in farm, or granted pottahs for the cultivation of lands for a term not exceeding ten years to renew such engagement, lease, or pottah, at any period before the expiration of it, excepting in the last year, at any time during which it shall be lawful for the parties to renew such engagement, calculating from the expiration of the year in which such renewal may take place. All evasions of the prohibitions contained in this section, by entering into two separate engagements, leases, or pottahs, at the same time; dating an engagement, lease, or pottah, subsequent to the period at which it may have been actually executed; or by any other device, shall be considered as an infringement of them; and every engagement fixing the jumma of a dependant talookdar, and every lease or pottah which has been or may be concluded or granted in opposition to such prohibitions, is declared null and void.

Sec 2. Regn. XLIV of 1793.

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5. Whenever the whole or a portion of the lands of any zemindar, independent talookdar, or other actual proprietor of land, shall be disposed of at public sale for the discharge of arrears of the public assessment, all engagements which such proprietors shall have contracted with dependent talookdars whose talooks may be situated in the lands sold, as also all leases to under-farmers, and pottahs to ryots, for the cultivation of the whole or any part of such lands (with the exception of the engagements, pottahs, and leases specified in Sections 7 and 8), shall stand cancelled from the day of sale, and the purchaser or purchasers of the lands shall be at liberty to collect from such dependent talookdars, and from the ryots or cultivators of the lands let in farm, and the lands not farmed, whatever the former proprietor would have been entitled to demand according to the established usages and rates of the pergunnah or district in which such lands may be situated, had the engagements so cancelled never existed.

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Section 5.—The ryots in the different parts of the country frequently omitting or refusing to take out or receive pottahs, although the persons from whom they are entitled to demand them are ready to grant them in the form and on the terms prescribed by the Regulations, it is declared, that if a proprietor or farmer of land, or a dependent talookdar, after the approbation of the collector to the form of the pottah or pottahs for the lands in his estate or farm shall have been obtained, as prescribed in Section 58, Regulation VIII, 1793, shall fix up in the principal cutcherry or cutcherries of his estate or farm a notification in writing, under his seal and signature, specifying that pottahs according to the form approved, and at the established rates, will be immediately granted to all ryots who may apply for them, and stating where, and when, and by whom the pottahs will be delivered, the notification shall be considered as a legal tender of a pottah, and the proprietor of land, the farmer, or the dependent talookdar, shall be deemed to have complied with the orders in Section 59, Regulation VIII, 1793, and the persons so tendering pottahs shall be entitled to recover the rents due to them from such ryots, either by the process of distraint laid down in Regulation XVII, 1793, or by suit in the Dewanny Adawlut.

Regulation IV of 1794

6. The approbation of the collector required to be obtained to pottahs by Section 58, Regulation VIII, 1793, is to be considered to extend to the form only. If a dispute shall arise between the ryots and the persons from whom they may be entitled to demand pottahs, regarding the rates of the pottahs (whether the rent be payable in money or kind), it shall be determined in the Dewanny Adawlut of the zillah in which the lands may be situated

according to the rates established in the pergunnah for lands of the same description and quality as those respecting which the dispute may arise.

7. The rules in the preceding section are to be considered applicable not only to the pottahs which the ryots are entitled to demand in the first instance, under Regulation VIII, 1793, but also to the renewal of pottahs which may expire or become cancelled under Regulation XLIV, 1793. And to remove all doubts regarding the rates at which the ryots shall be entitled to have such pottahs renewed, it is declared, that no proprietor or farmer of land, or any other person, shall require ryots whose pottahs may expire or become cancelled under the last-mentioned Regulation to take out new pottahs at higher rates than the established rates of the pergunnah for lands of the same quality and description, but that ryots shall be entitled to have such pottahs renewed at the established rates, upon making application for that purpose to the person by whom their pottahs are to be granted, in the same manner as they are entitled to demand pottahs in the first instance by Regulation VIII, 1793.

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Regn 51 of 1795 (Benares), Secs. 9 and 10.

9. If a dispute shall arise between the ryots and the persons from whom they may be entitled to demand pottahs, regarding the rates of the pottahs (whether the rent be payable in money or kind), it shall be determined in the Dewanny Adawlut of the city, or zillah, in the jurisdiction of which the lands may be situated, according to the rules established in the pergunnah, or tuppah, or talook, for lands of the same description and quality, and for the same caste of cultivators, as those respecting which the dispute may arise.

10. The rules in the preceding section are to be considered applicable not only to the pottahs which the ryots are entitled to demand in the first instance, but also to the renewal of pottahs which may expire or become cancelled; and it is declared that no proprietor or farmer of land, nor any other person, shall require ryots, whose pottahs may expire or become cancelled, to take out new pottahs at higher rates than the established rates of the pergunnah, for lands of the same quality and description; due consideration being had, as far as may be required by the custom of the district, to the alteration of the species of culture and the caste of the cultivator. Under this rule, khodkast or chupperbund ryots, will be entitled to have their pottahs renewed at the established rates, upon making application for that purpose to the person by whom the pottahs are to be granted, as are also pyekast ryots, provided the proprietor or farmer chooses to permit them to continue to cultivate the land, which they have the option to do or not as they may think proper on the expiration of all pyekast leases; whereas khodkast ryots cannot be dispossessed as long as they continue to pay the stipulated rent.

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Regn VII of 1799, Sec. 29, Cl. 5

Fifth.—The Collectors are to give possession to purchasers at the public sales of lands within their respective zillahs, by publishing at the head cutcherree of the pergunnah or other mehal sold, and at the cutcherree of the Dewanny Adawlut, in the jurisdiction of which such mehal may be situated, a statement of the land sold (as exhibited at the time of sale), the name of the purchaser, the date of his purchase, and his succession to all the rights of the former possessor. In the event of any further measures being necessary to put the purchaser in possession, he is to apply to the Judge of the zillah or city, within which the land may be situated, and on inspection of the proclamation above-mentioned, the Judge is to put the purchaser in possession of the property sold to him, as therein specified, by the usual process for giving possession of all other property under decrees of the Courts of Justice. If the late incumbent shall dispute the right of the purchaser to any part of the property so delivered over to the purchaser, as not being included in the purchase, he (the former incumbent) is at liberty to institute a regular suit in the Dewanny Adawlut for the recovery thereof, with costs and damages; and in like manner, if the purchaser thinks himself entitled to any property which the Judge may not deliver over to him, as not appearing to have been included in the sale, he is at liberty to sue the late incumbent for the same in the Dewanny Adawlut; and, on proof of his title, shall recover such property with all costs and damages. If any other person not being the late incumbent or his representative shall claim any part of the property sold, and delivered over to the purchaser, he is at liberty to institute a suit against the former incumbent and purchaser jointly for the recovery thereof; and, on proof of his right, shall receive back the same, with costs and damages from the late incumbent; who shall further, in such case, if the property adjudged were clearly included in the sale, be compelled by the Dewanny Adawlut to make reparation to the purchaser adequate to the loss sustained by him; either by a refund of a proportion of the purchase money, or otherwise, as may appear just and equitable: Provided, however, that nothing in this rule is to be considered applicable to the rights of under-tenants of whatever description in the land sold, whose rents may have been payable to the late incumbent. As the purchaser is entitled only,

by the terms of his purchase, to the rights of the late incumbent (except in the cases provided for by Regulation XLIV, 1793), whatever disputes may arise between him and the under-tenants must be settled between them, or by the usual course of law, in like manner as they would have been between the under-tenants and the late incumbent if the sale had not taken place. But in cases of public sales or for arrears of the public revenue, the purchaser may, without any previous application to the Adawlut, eject any of the under-renters, whose leases are annulled by section v of Regulation XLIV, 1793; and who may decline the renewal of them on such terms as the purchaser by the above Regulation, and section vii of Regulation IV, 1794, is authorized to require from them, though it is hereby declared, in explanation of section v, Regulation XLIV, 1794, that it is not meant to annul the leases, or in anywise affect the tenure of the istimrardars (or tenants at a fixed rent) described in section xix of Regulation VIII, 1793, who by section xlix of that Regulation, were exempted from any increase of their fixed jumma at the formation of the decennial settlement, provided they had held their tenures at a fixed rent for more than twelve years antecedent to that period. On the contrary, such under-tenants (being declared in section xix of Regulation VIII, 1793, a species of pottah talookdars), were meant to be included in section vii of Regulation XLIV, 1793, which exempts from any increase of rent, under that Regulation, the lands of dependant talookdars who were exempted from any increase of assessment at the formation of the decennial settlement; and declares the revenue payable by such talookdars fixed for ever: Provided further, that whenever the land may have been sold to discharge an arrear of the public assessment upon such land, or upon the estate of which such land formed a part, no private claim thereto on the plea of sale, gift, or other transfer, or of pledge, mortgage, or other assignment, or any other private claim whatever, is to be admitted by any Court of Justice in bar of the prior and indefeasible right of Government, to hold the whole of the lands answerable in the first instance for the public revenue assessed thereupon, as immemorially known and acknowledged, and frequently declared in the Regulations and otherwise.

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Section I.—Whereas it has been deemed advisable to revise the rules established regarding the grant of pottahs by the proprietors of land paying revenue to Government, to their tenants, and also the rates at which persons purchasing land at the public sales are entitled to collect their rents; and whereas there are grounds to believe that considerable abuses and oppression have been committed by zemindars, talookdars, and farmers of land in the exercise of the powers vested in them, with respect to the distress and sale of the property of their tenants for the recovery of arrears of rent; and circumstances having occurred which render it necessary to explain the real intent and meaning of the existing rules regarding the sale of estates for the recovery of arrears of public assessment; and whereas it has been deemed expedient to annul the existing provisions for levying, in certain cases, a penalty of twelve per cent. in addition to the established interest on arrears due from the proprietors and farmers of estates, and at the same time to provide more generally for the levy of such interest, the following rules have been passed, to be in force on their promulgation throughout the provinces immediately dependent on the presidency of Fort William. **Regulation V of 1812.**

2. Section II, Regulation XLIV, 1793, Section II, Regulation L, 1795, and Clause Second, Section II, Regulation XLVII, 1803, by which the proprietors of land paying revenue to Government are precluded from granting leases for a period exceeding ten years, are hereby rescinded; and proprietors of lands are declared competent to grant leases for any period which they may deem most convenient to themselves and tenants, and most conducive to the improvement of their estates.

3. Such parts of Regulation VIII, 1793, and of Regulation IV, 1794, as required that the proprietors of land shall prepare forms of pottahs, and that such forms shall be revised by the collectors, and which declare that engagements for rent contracted in any other mode than that prescribed by the Regulations in question shall be deemed to be invalid, are likewise hereby rescinded: and the proprietors of land shall henceforward be considered competent to grant leases to their dependent talookdars, under-farmers and ryots, and to receive correspondent engagements for the payment of rent from each of those classes, or any other classes of tenants, according to such form as the contracting parties may deem most convenient and most conducive to their respective interests: provided, however, that nothing herein contained shall be construed to sanction or legalize the imposition of arbitrary or indfienite cesses, whether under the denomination of abwab, muthote, or any other denomination. All stipulations or reservations of that nature shall be adjudged by the Courts of Judicature to be null and void: but the Courts shall, notwithstanding, maintain and give effect to the definite clauses of the engagements contracted between the parties, or in other words, enforce payment of such sums as may have been specifically agreed upon between them.

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5. By Section V, Regulation XLIV, 1793, Section v, Regulation L, 1795, and Section v, Regulation XLVII, 1803, already cited, it is provided, that in cases in which leases may be cancelled on the occasion of public sales made for the recovery of arrears of assessment, the purchaser shall be entitled to collect, during the year in which the sale took place, whatever the former proprietor would have been entitled to receive, "according to the established usages and rates of the pergunnah or district in which such lands may be situated." There being, however, reason to believe that the pergunnah rates are in many instances become very uncertain, the following rules shall be observed on all occasions of that nature.

6. If any known established pergunnah rates shall exist, the same shall serve to determine the amount of the rent which should be received by persons deputed to attach the lands on the part of Government, or by the purchasers at the public sales.

7. In cases in which no established rates of the pergunnah or local division of the country may be known, pottahs shall be granted, and the collections made, according to the rate payable for land of a similar description in the places adjacent; but if the leases and pottahs of the tenants of an estate generally, which may consist of an entire village or other local division, be liable to be cancelled under the rules above noticed, new pottahs shall be granted, and the collections made at rates not exceeding the highest rate paid for the same land in any one year within the period of the three last years antecedent to the period at which the leases may be cancelled.

8. In the case of a dependent talookdar, if the rent of the lands be computed according to the rates payable by ryots or cultivators for land of a similar quality and description, a deduction shall be allowed from the gross rent in the adjustment of the jumma of such dependent talook, at the rate of ten per cent. for the talookdar's profit or income, over and above a reasonable allowance for charges of collection, according to the extent of the talook.

9. By the former and present Regulations, persons purchasing land at the public sales are competent under certain restrictions to annul engagements contracted between the late proprietor of the lands and his under-tenants: but it is hereby declared, that no cultivator or tenant of land shall be liable to pay an enhanced rent, though subject to enhancement under subsisting Regulations, unless written engagements for such enhanced rent have been entered into by the parties, or a formal written notice have been served on such cultivator or tenant at the season of cultivation, *viz.*, on or before the month of Jeth, notifying the specific rent, under the landholder's right of enhancing it, to which he will be subject for the ensuing Fussily or for the current Bengal year.

10. Unless such notification be duly served, no greater rent shall be exigible by process of distress or confinement of person, nor recoverable by suit in Court, than the cultivator or tenant was bound to pay under his previous engagements: and if more be levied from him, he shall be entitled to a refund of the excess with damages, on proof of the circumstances before a court of justice. In all practicable cases, the required notification shall be served personally on the tenant; but if he shall abscond or conceal himself, so that it cannot be served personally upon him, it shall be affixed at his usual place of residence: which latter process shall, in such case, be deemed and taken to be a sufficient service of the notification in question.

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Regn. VIII of 1819, sec. 18, cl. 5

Fifth.—The provisions contained in clauses 2 and 4 of this section, so far as they relate to the power of attaching and cancelling (under the circumstances therein described) the leases, farms, or other limited interests of persons holding intermediately between the proprietor and the actual cultivator, are hereby declared not to extend to khodkast ryots, or other resident cultivators of the soil. For any arrears which may be alleged to be due from those classes of persons, the party claiming them may proceed at any time during the year by distraint, or by process of arrest and summary suit, under the existing rules; proprietors, talookdars, or farmers, however, to whom an arrear of rent may be due at the end of the year from any khodkast ryot or other resident cultivators of the soil, are at liberty to institute a summary suit to establish the existence of such an arrear, taking out process of arrest in the usual form.—If the defendant shall not attend or cannot be arrested, the forms of process and proceeding prescribed in clause 3 of this section, shall be considered to be applicable to the case, and any summary judgment previously obtained on account of rent of the year just closed, shall be received as evidence of such arrear, upon the plaintiff's shewing that the judgment in question has remained unexecuted. If an arrear shall be adjudged by the Court to be due, and the amount shall not be immediately paid into the Court, the plaintiff shall be authorized by the Court to make such new arrangements as he may judge proper for the future management of the lands in question.

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Regn. XI of 1822, secs. 32 & 33

32. The above rules, or any other rules contained in the existing Regulations, by which persons are declared competent, under certain restrictions, to annul engagements con-

tracted between former proprietors and their under-tenants, and in certain cases to enhance the rent payable by such tenants, shall not be construed to entitle the purchasers of land at public sales to disturb the possession of any village zemindar, putteedar, mofussil talookdar, or other person having an hereditary transferable property in the land, or in the rents thereof, not being one of the proprietors party to the engagement of settlement or his representative. Nor shall the said rule be construed to authorize any purchaser as aforesaid to eject a khoodkhasht, kudeemee ryot, or resident and hereditary cultivator, having a prescriptive right of occupancy. Nor shall a purchaser demand a higher rate of rent from an under-tenant of either of the above descriptions, than was receivable by the former malguzar, saving and except in cases in which such under-tenants may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the land, in consequence of abatements having been granted by the former malguzars from the old established rates by special favour, or for a consideration, or the like, or in cases in which it may be proved that according to the custom of the pergunnah, mouzah, or other local division, such under-tenants are liable to be called upon for any new assessment, or other demand not interdicted by the Regulations of Government.

33. Persons purchasing at public sale, who may be desirous of enhancing the rents of their under-tenants shall, as heretofore, be required, in the absence of specific engagements to serve a formal notice of their intention, as prescribed in section ix, Regulation V, 1812; but nothing in the said section was intended, or shall be construed to affect the right of any individual possessing a transferable or hereditary right of occupancy to contest the justness of the demand so made: and to pay his rent, as heretofore, until the contrary shall be decided by a competent Court of Justice. Nor in any respect to annul or diminish the title of the ryots to hold their land subject to the payment of fixed rents, or rents determinable by fixed rates, according to the law and usage of the country.

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IX.—The Judgments in the Great Rent Case (Thakurani Dási, v. Bisheshur Mukerji and others, High Court, Calcutta, dated 19th June, 1865.)

Mr. Justice Trevor.—The plaintiff, in the case out of which the present reference has arisen, sues for a kubooleut from the defendant at a rent higher than that which he has paid in past years, on the ground of the increased value of the produce of the lands.

The defendant claimed to hold at a fixed rent, but his claim has been disallowed, and he has been declared to have only a right of occupancy. With a view of fixing the rent to which the zemindar is entitled, the Division Court has remanded the suit; but in consequence of conflicting decisions on the point, it was in doubt as to the particular principle on which the calculation should be made. It therefore referred the subject to the Court at large in the following terms:—

1st.—When there has been any increase in the value of the produce arising simply from a rise in prices, and not from the agency either of the zemindar or the ryots, and the zemindar is entitled to a new kubooleut from an occupancy ryot for an enhanced rent at fair and equitable rates, is the fair and equitable rate to be awarded that which might be obtained by commercial competition in the market, or is it a rate to be determined by the custom of the neighbourhood in regard to the same class of ryots?

2nd.—If the customary rate of the neighbourhood has not been adjusted with reference to the increased value of the produce, then on what principle is the customary rate to be adjusted?

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In determining the question proposed to the Court, it will be necessary, in the course of my remarks, to consider briefly the relative right of the Government, zemindars, and ryots in Bengal, before the enactment of Act X of 1859; *2nd*, the effect, if any, which Act X had on the previous relation of zemindars and ryots; and, *3rdly*, the principle which, under the circumstances set forth in the question put to the Court and under their present relation, should be adopted in the adjustment of their rents.

It might be sufficient, when considering the first point above noted, to limit myself to the relative rights of Government, zemindars, and ryots with a right of occupancy, as gathered from the Regulations of Government passed in 1793 and subsequent years. As, however, the learned Counsel and pleaders have turned the Court's attention to the state of things existing before the Decennial Settlement, I propose to make a few remarks on that period.

The earliest authentic records seem to point to a state of things in which the gross produce of the soil was, in some places, of right shared between the King, the village landholders, and

the permanent or the khoodkasht tenants who cultivated the lands of the village in which they resided, retaining them during their lives and transmitting them to their descendants; and in others, in which there were no village landholders between the King and the aforesaid tenants. At the time of Menu, the proportion legally claimed by the King was one-sixth; and so long as the demand of the State was fixed, the profits of the village communities and permanent tenants remained unchanged; but when the State, as was afterwards the case, raised its demand on the produce, the profits of the other sharers in the produce diminished in an equal proportion.

Mountstuart Elphinstone, Vol. I, Chap. 2.

In the state of things described above, property, says an able historian of India, in the English sense of the term, that is, the exclusive use and absolute disposal of the powers of the soil in perpetuity, was in no one person: each party was equally entitled by right to a share of the produce, and the practical question under such circumstances is, not in whom property resides, but what proportion of the produce is due to or claimable by each party.

Coming to later times, we meet with the class of persons, the predecessors and ancestors of the zemindars of the Perpetual Settlement, who seem not to have had any existence before the time of the Mahomedan conquest. The Sovereign and the permanent or khoodkasht tenants are always present, and in parts of the country other than Bengal, the village landholders, who all, in different proportions, receive their shares of the produce. It would be out of place to enter into an antiquarian discussion as to the rights of the zemindars, whether they were public servants filling a conditional office generally renewable and revocable on defalcation, but conveying no right of property in the grantee, the Sovereign ruler being the sole proprietor of the soil, in right and fact the real actual landlord—or whether, even if they did not originally possess, they did not acquire in course of time a property in the soil, and the right annexed thereto of disposing of it by sale, gift, and mortgage, subject, however, under any mode of alienation, to the Sovereign's claims for revenue. It will be sufficient to cite here, and to accept as sufficiently accurate for present purposes, the definition of a zemindar given by Mr. Harington. "A zemindar," says that gentleman, "appears to be, under the Mogul constitution and practice, a landholder of a peculiar description, not definable by any term in our language; a receiver of the territorial revenue of the State from the ryots and other under-tenants of the land, allowed to succeed to his zemindaree by inheritance, yet generally required to take out a renewal of his title from the Sovereign or his represtenative, on the payment of a fine of investiture to the Emperor; and a nuzurana or present to his provincial delegate the Nazim; permitted to transfer his zemindaree by sale or gift, yet commonly expected to obtain previous special permission, privileged to be generally the annual contractor for the public revenue received for his zemindaree, yet set aside with a limited provision in land or money when it was the pleasure of Government to collect the rents by separate agency, or to assign them temporarily or permanently by the grant of a Jagheer or Altumga; authorized in Bengal since the early part of the 18th century to apportion to the pergunnahs, villages, and lesser divisions of land within his zemindaree, the abwab or cesses imposed by the Soobadar, usually in some proportion to the standard assessment of the zemindaree established by Torun Mull and others, yet subject to the discretionary interference of public authority either to equalize the amount assessed on particular divisions, or to abolish what appeared oppressive to the ryot; entitled to any contingent emoluments proceeding from his contract during the period of his agreement, yet bound by the terms of his tenure to deliver in a faithful account of his receipts."

Vol. III, page 400.

The settlement of Torun Mull alluded to in this extract was, according to Sir John Shore, formed by collecting, through the medium of the canoongoes and other inferior officers, the accounts of the rents paid by the ryot, which served as the basis of it. It was made about 1582, and remained essentially in force for very many years. Under it, in accordance with the principle of Mogul finance, the gross produce of land was divided in certain proportions between the Sovereign and the husbandmen, the share of the former being from one-half to one-eighth of the gross produce, according to circumstances, and the zemindars with whom the settlement generally was made receiving, in Bengal, a portion of the land or its produce for their use and subsistence under the name of nankar, which did not in the aggregate exceed one per cent. of the revenues collected by them. The rate of rent or revenue to be paid by each ryot under the settlement of Torun Mull, and which represents a portion of the gross produce converted into money, was, in after time, designated the *ussul* or original rate, to distinguish it from those taxes or cesses which were subsequently imposed, and which though not, speaking generally, directly raised from the land, yet immediately or mediately pressed upon its cultivators. The origin of these cesses is not quite clear. Whether they were originally devised by Government as a means of raising the revenue of the State, or whether, having been, in

the first instance, devised by the zemindars as an unauthorized means of increasing their emoluments, they, on being discovered, gave the Government officers a hint as to a mode in which the demands of the State could be effectually raised, it is not very material now to enquire. It is quite clear that, however originating, from the time of Jaffir Khan, that is, since the reign of Aurungzebe at the beginning of the 18th century, they became an acknowledged Soobadaree impost. They were in general levied upon the standard assessment in certain proportion to its amount; and the zemindars who paid them were authorized to collect them from their ryots in the same proportion to the rents paid by them. When the value of the produce of the land remained the same as it had been previously, their imposition operated as an arbitrary enhancement of rent, which would not have been the case had the increase in the demand always arisen from an increase in the value of the Government share of the produce when measured in money. An increase of this nature, to a certain extent, must have taken place, according to the best authorities, between the time of Torun Mull and that of Jaffir Khan, from the extension of commerce and the influx of silver into the country; and it is not improbable that it may have had the effect of making these impositions less severely felt by the tenantry than they otherwise would have been. But, be that as it may, it remains, as observed by Mr. Mill, a fact "that though the demands of the great landholder, the State, were swelled by fiscal rapacity, it was thought necessary to have a distinct name and a separate pretext for each increase of exaction, so that the demand has sometimes come to consist of thirty or forty different items in addition to the nominal rent. This circuitous mode of increasing the payments assuredly would not," proceeds Mr. Mill, "have been resorted to, *if there had been an acknowledged right in the landlord to increase the rent. Its adoption is a proof that there was once an effective limitation, or real customary rent, and that the understood right of the ryot to the land, so long as he paid rent according to custom, was at some time or other more than nominal.*"

It is useless to attempt to trace right principle during the last years of Mahomedan rule in Bengal. The only principle of action traceable throughout is a determination on the part of the ruling power to exact by means of arbitrary imposts as much rent as possible from the zemindars or farmers of revenue as might be. "The mode of imposition," as remarked by Sir John Shore, "was detrimental both to the ryots and zemindars; and its direct tendency was to force the latter into extortion, and all into fraud, concealment, and distress."

Sir John Shore's Minute of June 1789, page 41.

It does not appear that, after the acquisition of the Dewanny by the East India Company any marked improvement in the method of apportioning the share of the produce of the land between the parties entitled to it, was made. The Settlement, sometimes quinquennial, but generally annual, was made sometimes with the zemindar, who, according to the preamble of Regulation II of 1793, after the deduction of the expenses of collection, paid over ten-elevenths of the net rents of his property as revenue to Government, retaining the remaining one-eleventh as his zemindaree profits,—and sometimes with strangers, who at auction bid over the head of the zemindar himself. In this case the zemindar received the profits of his nankar land, or some particular sum payable either by the farmer or from the public treasury; and the farmer, in order to enable him to meet his engagements with Government, frequently made without sufficient regard to the assets of the property which he had obtained in farm, resorted to every sort of exaction over his temporary tenants. This state of things was rendered worse by the ingenuity of the native collectors of Government, "who" to use the words of Government, "in 1786, had endeavoured to confound the limits of different districts, to vitiate accounts, to increase old abwabs, and to superadd new ones, and, in short, to involve oppression in such mystery and difficulty as nearly to defeat and set at defiance all attempts at detection."

It was in the midst of this state of things that the Decennial Settlement was determined on, which afterwards became perpetual. Its object was to fix the Government demand, to fix the demand which the zemindar should make on his tenants, and to guarantee to the zemindar the profits arising from his bringing waste lands into cultivation, and inducing the ryots to cultivate the more valuable articles of produce. "The rents of an estate can only be raised," remarks Lord Cornwallis, "by inducing the ryots to cultivate the more valuable articles of produce, and to clear the extensive tracts of waste land which are to be found in almost every zemindary in Bengal." By this Settlement the demand of the State was fixed for ever, thus at once remedying, perhaps too decisively and adversely to itself, the evil which had become chronic in Bengal, arising from the uncertainty in the share of the produce which the Government might claim as its own. The Government, moreover, has asserted in the preamble of the Regulations XIX. and XLIV. of 1793, its right to a share of the produce of every beegah in Bengal, assessed and unassessed, unless held lakheraj under a valid grant, or, in other words,

Lord Cornwallis's Minute, dated the 3rd February 1790, Vol. II, p. 185, Harington's Analysis.

unless Government has transferred its right to such share to individuals for a term or in perpetuity; and it has limited its demand in perpetuity over all assessed estates to the sum that, under the Settlement, was assessed upon them, leaving *the zemindar to appropriate to his own use the difference between the value of the proportion of the annual produce of every beegah of land which formed the unalterable due of Government according to the ancient and established usage of the country, and the sum payable to the public.* It has declared, moreover, that the zemindars, whatever they may have been originally, and however liable heretofore to be displaced from their estates with the bare pittance of nankar or other small allowance, are the actual proprietors of the soil, and that, as an implied consequence, they will not be liable to be ejected from their estates, but that, on failure to pay the revenue assessed upon them, their estates, or portions of them sufficient to meet the Government demand, will be brought to sale. Government, moreover, expressed a trust that, sensible of the benefit thus conferred on them, the zemindars would exert themselves in the *cultivation of their lands* (a considerable portion of which was then under jungle), under the certainty that they would enjoy exclusively (that is, without the interference of Government) the fruits of their own good management and industry; and Government reserved to itself the power, acting under the duty which belongs to it as ruling power, of protecting all classes of people, and more particularly those who from their situation are most helpless, of enacting, whenever it might deem it proper, such Regulations as it might think necessary for the protection and welfare of the dependant talookdars, ryots, and other cultivators of the soil; and it declared that no zemindars, independent talookdars, or other actual proprietors of land, shall be entitled on this account to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay.

Regulation I, 1793.

These words clearly show that, though recognized as actual proprietors of the soil, that is, owners of their estates, still zemindars and others entitled to a settlement, were not recognized as being possessed of an absolute estate in their several zemindarees; that there are other parties below them with rights and interests in the land, requiring protection just in the same way as the Government above them was declared to have a right and interest in it which it took care to protect by law; that the zemindar enjoys his estate subject to, and limited by, those rights and interests; and that the notion of an absolute estate in land is as alien from the Regulation law as it is from the old Hindoo and Mahomedan law of the country.

What, then, are those rights and interests recognized by law belonging to the ryots—for with them we are alone concerned—which limit and control the right of the zemindar in his own estate? At the time of the Decennial Settlement, the ryots were, in Bengal as in other parts of India, divided into khoodkasht or resident, and pykasht or non-resident. It has indeed been contended before us that time is of the essence of a khoodkasht tenure; that a ryot simply residing in a village in which his land is, is not a khoodkasht ryot; and that, in order to constitute a khoodkasht ryot under the Regulations, he must be a resident hereditary ryot; and that if he has not succeeded by right of heirship, he does not fall within that class of tenants. But it appears to me that, whether we look to the etymology of the word or to the thing itself, there is no reasonable ground for question. Khoodkasht ryots are simply cultivators of the lands of their own village, who, after being once admitted into the village, have a right of occupancy so long as they pay the customary rents, and therefore with a tendency to become hereditary, and with an interest in the produce of the soil over and above the mere wages of labour and the profits of stock, in other words, above the cost of production.

These tenants seem, at the Settlement, practically and legally, though not by express Statute, to have been divided into two classes, the khoodkasht kudeemee, and the simple khoodkasht, or those who had been in possession of the land for more than 12 years before the Settlement, and those whose possession did not run back so long. Both by the Hindoo and Mahomedan law, as well as by the legal practice* of the country, 12 years had been considered sufficient to establish a right by negative prescription, that is, by the absence of any claim on the part of other persons during that period, and hence the doctrine which has obtained, that khoodkasht ryots in possession 12 years before the Settlement, were, under no circumstances, not even on a sale for arrears of revenue, liable either to enhancement of rent, or eviction from their holding, so long as they paid the rents which they had all along paid. The existing leases of khoodkasht ryots at the time of the Settlement, who had no prescriptive rights, were, with certain exceptions, specified in Section 60 of Regulation VIII of 1793, to remain in force until the period of their expiry; and those ryots were entitled to renewal of their leases at *Pergunnah rates*; † and on a sale for arrears of revenue such ryots were entitled to a new settlement at the

* Colebrooke's Digest of the Regulations, Vol. III, page 4.

† Section 7, Regulation IV of 1794.

Pergunnah rates, and could be evicted only after declining to enter into engagement with the purchaser *at the same rates.* * It may here be observed that written engagements between the tenants and other parties were not the custom of the country. The entry of the tenants' names, and of the rents in the papers of the village accountants, was the only evidence of title which the great majority of the tenants in the country then held. The Regulations of 1793 attempted, but ineffectually, to introduce generally the system of the exchange of written engagements between the zemindars and their tenants.

* Section 5, Regulation XLIV. of 1793.
Clause 5, Section 29, Regulation VII. of 1799.

Khoodkasht ryots whose tenancy *commenced* subsequently to the Decennial Settlement, are entitled to hold on at the rate which they have either expressly or impliedly contracted to pay during the incumbency of the zemindar who granted the pottah and his representatives, whatever that rate may be; † and on a sale for arrears of revenue, they also are entitled to a renewal of their leases by a purchaser at the *Pergunnah rate.* Should the rate in the engagement cancelled by the sale have been below that figure, they can only be evicted on refusing to renew at the Pergunnah rates. Moreover, it was enacted generally by Section 6 of Regulation IV. of 1794, that if a dispute arises between the ryots and the persons from whom they may be entitled to demand pottahs regarding the rates of the pottahs, *it should be determined in the Dewanny Adawlut of the Zillah in which the lands were situated according to the rates established in the Pergunnah for lands of the same description and quality as those respecting which the dispute arose.*

† Section 5, Regulation XLIV. of 1793.
Section 7, Regulation IV. of 1794.
Clause 5, Section 29, Regulation VII of 1799.

The Legislature, as just now observed, was, in 1793, anxious to encourage the exchange of pottahs and kubooleuts between the zemindars and their tenants; but so fearful was it, lest from weakness or improvidence, the zemindars just recognised as actual proprietors should injure their own properties, and also endanger the stability of the Government revenue by granting long leases at *insufficient rents,* that it restricted the period for which leases could be granted to 10 years, renewable in the last year for another period of 10 years. This law‡ remained in force till 1812, when, by Regulation V. of that year, Section 2, the above restriction was taken off, and zemindars were declared competent to grant leases for *any period* which they might deem most convenient to themselves and tenants, and most convenient to the improvement of their estates. Moreover, by Regulation XVIII. of the same year, it was explained, in consequence of certain doubts which had arisen on the construction of Section 2 of Regulation V. of 1812, that the true intent of the said Section was to declare proprietors of land competent to grant leases for any period, even to perpetuity, and at any rent, which they might deem conducive to their interests.

‡ Section 2, Regulation XLIV. of 1793.

This law did not, however, expressly or by implication override the rights of khoodkasht ryots to hold at Pergunnah rates. It simply declared that, having regard to the rights of others, the zemindar might grant leases for any period or any rent, be it high or be it low, provided the tenants were willing to pay it and he to take it. Again, by Section 2 of Regulation VIII. of 1819, it was declared that all leases and engagements for the fixing of the rent now in existence, that may have been granted or concluded for a term of years or in perpetuity, by a proprietor under engagement with Government, or other persons competent to grant the same, shall be deemed good and valid tenure, notwithstanding that the same may have been executed before the passing of Regulation V. of 1812, and while the rule of Section 2 of Regulation XLIV. of 1793 above alluded to, was in full force and effect.

Thus, then, the khoodkasht ryots, though they were entitled to pottahs at the Pergunnah rates by the laws of 1793 and following years, and though, under Section 6 of Regulation IV. of 1794, the Courts were, in case of disputes, to determine the rate of the pottah according to those rates, still, under the operation of the laws above cited, ryots might, if they pleased, bind themselves by specific engagements irrespective of those rates; and of course, having done so voluntarily, they would be held strictly to the terms of their engagement. As I have observed above, it had become the practice of the Government for the time being to collect various imposts from the zemindar, who again was entitled to collect them from the ryots; and from their number and uncertainty, they had been intricate to adjust, and a source of oppression to the tenants. These also were entered in the papers on which the Decennial Settlements were based, and consequently had been legalized and recognized by it. By Section 54 of Regulation VIII. of 1793, all proprietors of land and dependent talookdars were required to consolidate these charges with the *ussul* or original rate, into one specific sum. And by Section 55 of the same law, proprietors and farmers of lands of whatever description were prohibited imposing

any new abwab or muhtoot on the ryots, and a penalty was enacted in case of any infringement of the prohibition.

When then the term Pergunnah rate occurs in the Regulations of 1793, 1794, and 1799, in connection with khoodkasht ryots, the question arises, is it confined to the particular portion of the produce of land to which, by the custom of that Pergunnah, the demand of the zemindar is limited, or does it include also the abwab recognized by Regulation VIII. of 1793 which has become consolidated with it? The Court has been told, indeed, that the Pergunnah rate never meant anything; that it was a mere myth; but that, if it did mean any thing, it was only another term for the zemindar's discretion or moderation; and that, even if those rates existed in 1793, they had become well nigh obsolete in 1812; for although, by Section 6 of that law, it is enacted that established Pergunnah rates, where such existed, shall determine the amount to be collected by Government officers and purchasers at sales for arrears of revenue, still by Section 7 it is enacted that, in cases in which no established rates of the Pergunnah or local division of the country may be known, pottahs shall be granted and the collections made according to the rate payable for land of a similar description in the places adjacent. I cannot assent to the doctrine that the Legislature in 1793 and the following years used terms without meaning, and directed the Court to settle disputes according to a rate which then had no existence I must rather conclude that the terms which the Legislature used to denote the rate which was to form the limit of the zemindar's demand, represented something real and distinct at that period; and although in the shape of a Pergunnah rate, the limit on the zemindar's demand had become by 1812, in some places indistinct, still the limit existed in the shape of the rate *which was payable for lands of a similar description in the places adjacent*,—a rate which is in fact the same thing with the Pergunnah rate, under a different form—the customary rent deduced from the similar rate paid in places adjacent rather than from a rate current in the Pergunnah.

Reverting then to the question, what the words Pergunnah rate, as used in the old laws, meant, I have no hesitation in holding that it must be considered to mean the *ussul* or original rate, the rate of Torun Mull, together with the abwab which had been subsequently levied from the tenants and recognized by the Settlement. It is true that these two quantities joined together did not probably exactly represent that share of the produce calculated in money which, under a pure system of customary rents, would have been developed; but judging from the increased wealth of the country, which had, from commerce and the influx of precious metals, resulted between the time of Torun Mull and the Decennial Settlement, the assessment which had been increased in one form did not probably differ widely from what it would have been had the other and natural mode of calculating the increase been adopted. Since the Decennial Settlement, however, the rates of rent have adjusted themselves to the varying prices of the produce irrespective of any extraneous demand; and the terms used in Regulation V. of 1812 have regard to the varying rates in the different localities which have resulted solely under the increased activity and industry caused by the comparative security obtained under the Permanent Settlement.

To suppose that a Pergunnah or local rate of rent could be permanently fixed in amount *when the circumstances of the country were improving*, is to suppose an impossible state of things. The proportion of the produce calculated in money payable to the zemindar, represented by the Pergunnah or local rate, remains the same; but it will be represented, under the circumstances supposed, by an increased quantity of the precious metals.

The rates of rent, then, which khoodkasht ryots *under the old Regulations* were liable to pay, independent of contract, remained in all cases, whether under a purchase at a sale for arrears of revenue, or otherwise, fixed either at the Pergunnah rate, the rate payable by land of a similar description in the places adjacent, or at rates fixed according to the law and usage of the country; and they were entitled to hold their lands so long as they paid those rates. But when Regulation XI. of 1822 was passed, the use in Section 32 of that law of the terms khoodkasht kudeemee ryot, or resident and hereditary ryot with a prescriptive right of occupancy, to designate the cultivator who would not be liable to eviction on a sale for arrears of revenue, gave rise to the doctrine, that khoodkasht ryots who had their origin subsequent to the Settlement were liable to eviction, though if not evicted, they, under Section 33, could only be called upon to pay rents determined according to the law and usage of the country, and also, that the possession of all ryots whose title commenced subsequent to the Settlement was simply a permissive one, that is, one retained with the consent of the landlord.* Again, by Act XII. of 1841, and Act I. of 1845 (which repealed the former), a purchaser acquired his estate free of all encumbrances which had been imposed on it after the time of the Settlement; and he is entitled, after

* S D Decisions for 1856, pages 617 to 628.

notice given under Section 10 of Regulation V. of 1812, to enhance *at discretion*, anything in the Regulations to the contrary notwithstanding, the rents of all under-tenures in the said estate, and to eject all under-tenants with certain exceptions, amongst which are khoodkasht kudeemee, but not simple khoodkasht ryots. It follows that these laws distinctly gave the purchaser the power to eject a khoodkasht ryot whose tenure was created after the permanent settlement, and if not ejected, they are liable to be assessed *at the discretion of the landlord.* This word "discretion" entirely annihilated the rights of the khoodkasht tenants created subsequent to the Settlement in estates sold under these laws. It reduced them from tenants with rights of occupancy, so long as they paid the established rate of the Pergunnah, or the rate which similar lands paid in the places adjacent, into mere tenants at the will of the zemindar, who might in any year eject them, and place in their stead any tenant competing for the land. It is, in short, introducing into this country competition in the place of customary rent.

As to pykasht ryots they are nowhere expressly mentioned in the laws referring to Bengal. If they held under pottahs at the time of the settlement, they were entitled to hold them till the expiry of the lease under the comprehensive terms of Clause I, Section 60, Regulation VIII. of 1793, which included even them. In Section 10, Regulation LI. of 1795, which referred to Benares, they are expressly mentioned, and they are declared to be equally entitled with khoodkasht ryots to have their pottahs renewed at the established rates, provided the proprietor or farmer chooses to permit them to cultivate the land held by them, which they have the option to do, or not to do, as they think proper, on the expiry of all pykasht leases. In Bengal the rates of pykasht ryots at the present date, though it seems to have been different formerly, are generally above the Pergunnah rates. They have always been considered to have no rights independent of the particular engagements under which they hold; and those being cancelled, they are liable to immediate eviction.

Such was the state of the law when Act X. of 1859 was passed, under the power, it may be presumed, which the Governor General in Council had reserved to himself in the 7th Article of the Proclamation inserted in Regulation I. of 1793, of enacting, whenever he might deem it proper, such Regulations as he might think necessary for the protection and welfare of the ryots and cultivators of the soil. They were, in the opinion of the Legislature, insufficiently protected: hence the new law which re-enacted with modifications certain old laws rescinded by it, and which, moreover, as we shall see presently, interfered with the rights of the zemindars as laid down in the legislation of the last thirty years.

By the first Section of this Act are rescinded all those Regulations which laid down the rights of khoodkasht or permanent resident ryots; Regulations IV. of 1794 and V. of 1812, as to the rates at which they were entitled to pottahs, were repealed, and such parts of Section 26 of Act I. of 1845 (by which law Act XII. of 1841 was repealed) as related to the enhancement of rents and the ejectment of tenants by the purchasers of an estate sold for arrears of Government revenue, was modified; and it was enacted by Section 3 that ryots who hold lands at fixed rates of rent which have not been changed from the time of the permanent settlement, are entitled to receive pottahs at those rates; and by Section 4, *proof*, that the rent has not been changed for 20 years, raises the presumption that the land has been held at that rent from the Permanent Settlement. By Section 5 it is enacted that ryots having right of occupancy, but not holding at fixed rates, as described in the two preceding Sections, are entitled to receive pottahs at *fair and equitable rates*; and, in case of dispute, the rate previously paid by the ryot shall be deemed to be fair and equitable, unless the contrary be shown in a suit by either party under the provisions of this Act. Then follows Section 6, by which it is enacted that "every ryot who has cultivated or held land for a period of 12 years, has a right of occupancy in the land so cultivated or held by him, whether it be held under pottah or not, so long as he pays the rent payable on account of the same; but this rule does not apply to khamar, nij-jote, or seer land belonging to the proprietor of the estate or tenure, and let by him on lease for a term or year by year, nor (as respects the actual cultivator) to lands sub-let for a term or year by year by a ryot having a right of occupancy. The holding of the father or other person through whom a ryot inherits shall be deemed to be the holding of the ryot within the meaning of this Section." Section 7 declares that "nothing contained in the last preceding Section shall be held to affect the terms of any written contract for the cultivation of land entered into between a landholder and a ryot, when it contains any express stipulations contrary thereto;" and Section 8 declares that "ryots not having rights of occupancy are entitled to pottahs only at such rates as may be agreed on between them and the persons to whom the rent is payable."

All ryots, then whether khoodkasht or pykasht, with the right of occupancy, are, under Section 6 of this law, entitled to pottahs at *fair and equitable rates;* and the point which we have eventually to determine is the meaning to be given to the words "fair and equitable" under the circumstances of the present case. Before, however, proceeding to the determination

of that point, a preliminary difficulty has to be settled. It has been urged before the Court that Section 6, in whatever way it be read, affects the vested rights which zemindars have, under existing laws, in their lands held by ryots who may occupy it for 12 years; that whereas those persons had no right of occupancy at all previously, but were mere tenants-at-will, the Legislature gives that right to them now after 12 years' occupancy only; that, consequently, the law should be read, not retrospectively, but prospectively, that is, it should be read in such a manner as to give the zemindar an opportunity to avoid its, to him, disadvantageous enactments, and in such a way as to infringe as little as possible on his vested rights; and the case of Moore *versus* Durden has been cited to us as an authority. Undoubtedly, with reference to past transactions and to such as are still pending, laws should be constructed as prospective, not as retrospective, unless they are made expressly applicable to them; but in the present instance the Court has to deal, not with past transactions, but with the status or condition of persons; and the Court has only to determine whether the Legislature intended to, and did in furtherance of that intention, declare or enact that the status or condition of a ryot with right of occupancy should be held by or given to all ryots who might either at the passing of the Act have occupied or might at any time, partly before and partly after its enactment, occupy for 12 years, or whether it simply enacts that 12 years' continuous occupancy *subsequent* to the passing of the Act should confer that condition on every ryot so holding. This point must be determined with reference to the terms of the law and the intent of the Legislature as gathered therefrom.

After having attentively considered the point raised before the Court, and keeping in mind the magnitude of the innovation which by the interpretation adopted by me is wrought on the immediately previously existing law, I am clearly of opinion that the terms of the Act confer on every tenant, be he a khoodkasht or pykasht ryot, in every estate in the country, who had held at the time of the passing of the Act, or might at any time, partly before and partly after the enactment of the law, occupy for 12 years, a right of occupancy, whether he had that right before or not. The inexact terms of the law might, if considered alone, leave a doubt on the subject. But when the terms of the Section are considered in connection with the repeal of the old laws regarding the rights of khoodkasht ryots, except as to proceedings commenced before the Act came into force—with the modification of Act I. of 1845, so far as relates to the enhancement of rent and the ejectment of tenants by an auction-purchaser, a modification which, as the old laws are repealed, would have nothing upon which to act, did the law not intend to affect the status of parties from the date on which it was passed and to be in force accordingly—and with the cotemporaneous enactment of a new Sale Law, Act XI. of 1859, attended with the total repeal of Act I. of 1845, in which there is a Section (37) with a proviso, which becomes intelligible only on the supposition that Section 6 is current law,— I cannot entertain a doubt that it was the intention of the Legislature, as gathered from the terms of the law, with which alone sitting as a Judge I have to do, that the law in question should affect the status of all ryots falling within its terms on and from the date of the passing of the Act.

This being my opinion, and the points referred to the Court not having fallen through, as they would have done had the Court at large thought differently, I have now to consider the meaning of the terms "fair and equitable" under the circumstances of the present case, when applied to ryots with a right of occupancy.

It has been urged by the learned Counsel, Mr. Doyne, that there are three classes of tenants: khoodkasht ryots, holding at an invariable rate from before the Settlement; ryots holding from old dates, but subsequent to the Settlement; and the creatures of Act X.; that the first class may be said to pay a rent regulated by custom; that the second class might be able to show the same, though, as the zemindar might at any time put an end to their tenancy, it is difficult to see how they could show a rent regulated by custom; but that to the third no custom could apply, for, previous to the enactment of Act X., they were mere tenants-at-will: that the Legislature, by Section 6 of Act X., has only given these ryots a right of occupancy, or, in other words, a preference or a refusal curtailing in no way the right of the zemindar as to the rate of rent which he might demand; that the zemindar, being absolute owner, is entitled to a full rent, a rent proper under the system of competition, that is, the portion of the value of the whole produce which remains after the deduction of the ryot's costs of production—in other words, to rent calculated on the principle of Ishur Ghose's case; that the rates of rent by the system of proportion in the case of a rise in the price of the produce can only be adopted with any show of justice in a case in which it appears clearly that the rate existing up to the present time is based on a certain proportion of the ryots' produce; that, although it is alleged that the Pergunnah rates were so calculated, there is no proof of the fact; that, even were the mode of calculation just, it would at present be impossible of application, for one could not find the value of the ryot's produce at the time of the last adjustment of the rent; that the zemindars have

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hitherto always entered into engagements with their tenants on calculations based on the theory of rent laid down by political economists; and that this right should be continued, and the principle laid down in Ishur Ghose's case confirmed.

It appears, as I have observed above, that, under the old Regulations of Government, all resident khoodkasht and permanent ryots had enjoyed a right of occupancy, and were entitled, unless they had waived their right by entering into a specific contract inconsistent with it, to enjoy the same so long as they paid their rent, either according to the Pergunnah rate, or to the rate which such lands paid in places adjacent, or the rate fixed by the law and usage of the country; and their tenures could not, by Clause 5, Section 18 of Regulation VIII. of 1819 (a Section of law repealed by Act X. of 1859, and re-enacted in a more complete form in Section 78 of this Act), be cancelled, except after a summary suit obtained at the end of the year, and on failure on the part of the tenant to pay the amount immediately after the decree had been obtained. The right of occupancy which the khoodkasht permanent tenant formerly enjoyed has been granted by Clause 6 to all tenants occupying their lands for the space of 12 years, whether under pottah or otherwise; and they are entitled to receive pottahs at *fair and equitable* rates. Now, I cannot agree with the learned Counsel in thinking that the Legislature intended merely to give to those tenants a preferential right to hold the land being then subject to be rack-rented by the zemindars. I agree with the Select Committee that sat on Act X. of 1859, which remarked that the recognition of a right of occupancy in the ryot implies necessarily some limit to the discretion of the landholder in adjusting the rent of the person possessing such a right; and I think that the terms "fair and equitable" are used with reference to that limit, or, in other words, to the right which tenants with a right of occupancy had under the old Regulations, and that therefore they are the equivalent of Pergunnah rates, rates which similar lands bear in places adjacent, or rates fixed by the law and usage of the country, and are to be explained and interpreted by these customary rates; in short, it appears to me that it was the intention of the Legislature to place the ryot whose rights were created by Act X., in exactly the same position as all other tenants with a right of occupancy held under the old Regulations,—and this notwithstanding that recent legislation had curtailed the rights which he enjoyed under those old laws. And here I would notice the error which seems to me to pervade the reasoning of the learned Counsel, *viz.*, that of considering that the principle of competition has ever in this county, to any appreciable extent, determined the mode in which the gross produce shall be divided between the zemindar and the ryot.

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"It is only," observes Mr. Mill, "through the principle of competition that Political Economy has any pretension to the character of a science. So far as rents, profits, wages, prices, are determined by competition, laws may be assigned for them. Assume competition to be the exclusive regulator, and principles of broad generality and scientific precision may be laid down according to which they will be regulated. But it would be a great misconception of the actual course of affairs to suppose that competition exercised, in fact, this unlimited sway. Competition, in fact, has only become in any degree the governing principle of contract at a comparatively modern period The further we look back into history, the more we see all transactions and engagements under the influence of fixed custom. The reason is evident. Custom is the powerful protector of the weak against the strong, their sole protector where there are no laws or Government adequate to the purpose, though the law of the strongest decides. It is not the intention, or, in general, the practice of the strongest to strain the law to the utmost; and every relaxation of it has a tendency to become a custom, and every custom to become a right. Rights thus originating, and not competition in any shape, determine in a rude state of society the share of the produce enjoyed by those who produce it. The relation more especially between the landholder and the cultivator, and the payment made by the latter to the former, are in all states of society but the most modern, determined by the usage of the country. Never until late times has the condition of the occupancy of land been, as a general rule, an affair of competition. The occupier for the time has very commonly been considered to have a right to retain his holding whilst he fulfils the customary requirements, and has thus become in a certain sense a co-proprietor in the soil." Mr. Mill goes on to give India as an example of his remark, observing, at the same time, that "the customary rents have become obscure, and that usurpation, tyranny, and foreign conquest have to a great degree obliterated the evidence of them,"—and he adds "that the British Government of India always simplifies the tenure of a ryot by consolidating the various assessments (that is, the real rent and the taxes subsequently imposed) into one, thus making the rent, nominally as well as really, an arbitrary thing, or at least a matter of specific agreement; but it scrupulously respects the right of the ryot to the land, though until the reform of the present generation (reform even now only partially carried into effect) it seldom left him much more than a bare subsistence." These remarks seem to

me admirably to describe the state of things which has existed in this country, to show that any reasoning drawn from facts peculiar to England must be fallacious, and also to confirm the view which I have taken of looking upon Section 6, Act X. of 1859 as a further reform, to adopt Mr. Mill's language, made by the present generation in the interest of the ryot, and a partial return to the old state of things, entitling ryots with right of occupancy acquired under the law by a 12 years' occupancy to obtain pottahs at a rent fair and equitable according to the custom of the country and not according to the theory of English Political Economists, by whose analysis, when applied to this country, all that is not comprehended in the wages of his labour, and profit of the ryot's stock, must be the landholder's rent.

As, then, the terms "fair and equitable" seem to me to have relation to the customary rate of the country representing a share of the gross produce calculated in money under whatever form of expression it be designated, and as the law directs that in case of disputes the rate of rent which a ryot with a right of occupancy has paid shall be considered fair and equitable until the contrary be shown, it is a fair presumption that the rent now paid represents the customary rent in the absence of any proof to the contrary. Under this presumption, then, when the value of the produce has increased otherwise than by the agency or the expense of the ryot or the zemindar, and simply in consequence of the rise of prices, what is the principle on which the rents should be adjusted?

As the rent now paid represents the customary rent, it represents on the view which I have adopted that proportion of the gross produce calculated in money to which the zemindar was entitled; and as the increase in the produce has arisen from circumstances independent both of the zemindar and the ryot, the zemindar is entitled to a rise in his rent proportionate to the increased value of his share of the produce. The formula, then, by which this increase should be determined seems to me to be the following. The value of the gross produce before the alleged alteration in the same is to the rent which the land then bore, as the altered value of the produce is to the rent which should be assessed on it, or, in another form, the old rent must bear to the new rent the same proportion as the former value of the produce of the soil bears to its present value. This method of calculation on the supposition that the costs of production have risen in the same ratio, leave the parties as to each other in exactly the same relative position as they were. The value of the produce which each would receive, the one as rent, the other as ryot's profits, or as representing his beneficial interest, would remain in the same proportion to each other, though the figures representing that proportion will be altered; but even if the costs of production have not increased in the same ratio, that is a point which, under a system in which custom gives to a zemindar only a fixed portion of the produce, is immaterial, or rather one which will not entitle the zemindar by his own act to alter that customary proportion. All the risk of seasons and markets is (as was observed by Baboo Dwarkanath Mitter) with the tenant. But this is not the main reason which entitles the tenant to retain the supposed advantage. It is the system itself which, having once fixed the proportion for which the ryot is liable to the zemindar, refuses to look at costs of production or matters of detail, being content with seeing that the payment of the fixed share of the produce belonging to the zemindar, or that the altered value of that share in money, is ensured to him. Not so, however, under the system in which competition determines the division of the produce. According to this, all that does not legitimately fall within wages and profit is rent, and the competition which has the tendency to reduce profit has the same tendency to raise landlord's rents; but as I have given my opinion that that system does not ordinarily obtain in India, it is unnecessary to carry the subject further.

An objection was made to the method of proportion on the ground that it was not universally applicable, and that this defect showed that the method is unsound in itself. But such is not the case; for whether the productive power remaining the same, the value of the produce has increased, or whether the productive power has alone increased, or whether the land be proved by measurement to be greater than the quantity for which the rent has been previously paid, provided the whole land be of one and the same quality, in all these cases coming under Section 17 of Act X. of 1859, the method of proportion is applicable; and the objection therefore, now under notice, need not delay the Court longer. But it was observed by the learned Counsel that, granting that the system of proportion was the correct system to be adopted in a case like that before the Court, great and insuperable difficulties would arise in its application; that it would be impossible to find the value of the produce, net or gross, at the time of the last adjustment, which may have been at a remote period; and that by a failure to settle the two first terms of the proportion, the whole calculation would break down. But I do not see any necessity for these supposed difficulties. A zemindar, on suing to enhance, must state the grounds on which he desires the enhancement. If his claim be founded on the increase in the value of the produce through a simple rise of price, he will, whatever the mode

of adjustment determined on, have to state the circumstances leading to the demand, and he will have to inform the Court of the particular rise in price subsequent to the last adjustment which justifies that demand. In stating this, he will give the Court sufficient data for the formula above laid down. It is unnecessary to refer to the period of the last adjustment itself. The price of the produce, previous to the date of the alleged rise in value, will be sufficient data on which to base the formula of proportion; and when that is obtained, and the rent also, the two first terms of the formula are at hand, and no difficulty need be experienced.

But these remarks apply to cases in which there is no evidence to rebut the presumption that the rate hitherto paid, which, in case of dispute, by the direction of the Legislature, is to be considered fair and equitable until the contrary be shown, is the customary rate. There may, and probably will, as was remarked by Mr. Doyne, be many cases in which parties will be sued for the enhancement of their rents who were mere tenants-at-will, and who hold under written engagements in which their rents are based upon data inconsistent with the presumption of the rate being a customary rate, and thereby rebutting that presumption, but who by the operation of Section 6 became vested with the right of occupancy. In these cases, of course, the method of proportion will not be applicable. The rents will be adjusted upon the same principle as they were under the old contract, to which the ryots voluntarily submitted themselves.

It was also urged that there were cases in which the old rents had, according to the written terms of the pottah and kuboolcut, been settled at rates below the ordinary one, in consideration of certain acts to be done by the tenants which are no longer required to be done; that in this case the rate in the old engagement could not be presumed to be the customary rate; but that before the method of proportion could be applied to these cases, the old rents must be adjusted so as to equal the rate which was ordinarily borne by similar lands in the places adjacent when such rate was uninfluenced by any extraneous circumstances. This contention is undoubtedly sound; and whenever it is shown from the contract itself that such extraneous circumstances have affected the terms of it, they must be eliminated, and a calculation made irrespective of those must be substituted in their place before the method of proportion can fairly be applied.

In answer, then, to the questions which have been put to the Court by the Division Bench, I would reply that the terms "fair and equitable" when applied to tenants with a right of occupancy, are to be construed as equivalent to the varying expressions, Pergunnah rates, rates paid for similar lands in the adjacent places, and rates fixed by the law and usage of the country,—all which expressions indicate that portion of the gross produce calculated in money to which the zemindar is entitled under the custom of the country; that, as the Legislature directs that, in cases of dispute, the existing rent shall be considered fair and equitable until the contrary be shown, that rent is to be presumed, in all cases in which the presumption is not by the nature and express terms of the written contract rebutted, to be the customary rate included in the terms Pergunnah rates, rates payable for similar lands in the places adjacent, and rates fixed by the law of the country; that in all cases in which the above presumption arises, and in which an adjustment of rent is requisite in consequence of a rise in the value of the produce, caused simply by a rise of price and by causes independent both of the zemindar and ryot, the method of proportion should be adopted in such adjustments—in other words, the old rent should bear to the existing rent the same proportion as the former value of the produce of the soil, calculated on an average of three or five years next before the date of the alleged rise in value, bears to its present value; that in all cases in which the above presumption is rebutted by the nature and express terms of the old written contract, the re-adjustment should be formed on exactly the same principle as that on which the original written contract which is sought to be superseded was based; and that in cases in which it appears, from the express terms of the previous contract not still in force, that the rents then made payable by the tenant were below the ordinary rate paid for similar land in the places adjacent, in consequence of a covenant entered into by the ryot to cultivate indigo or other crops, the old rent must be corrected so as to represent the ordinary rate current at the period of the contract, before it can be admitted to form a term in the calculation to be made according to the method of proportion above laid down.

Justices Loch, Bayley, Jackson, and Glover.—We concur in the judgment delivered by Mr. Justice Trevor.

Mr. Justice Macpherson.—This case has been argued before the Full Court of fifteen Judges, in order that the opinion of the Court may be obtained on the following questions arising on the construction of Act X. of 1859, *viz.*—

1st.—When there has been increase in the value of the produce, and *the zemindar is entitled to a new kubodlent* from an occupancy ryot for an enhanced rent, at fair and equitable

rates, is the fair and equitable rate to be awarded the rate which might be obtained by commercial competition in the market, or is it a rate to be determined by the custom of the neighbourhood in regard to the same class of ryots?

2nd.—If the customary rate of the neighbourhood has not been adjusted with reference to the increased value of produce, then on what principle is the enhancement of that customary rate to be adjusted?

The question in fact is—a ryot having a right of occupancy being entitled to a pottah, "at fair and equitable rates," what meaning is to be attached to these words, and how is it to be ascertained what rates are fair and equitable? Act X. of 1859 is silent upon the point: and it is for the Court now to determine what rates are to be deemed fair and equitable.

It appears to me that, in order to arrive at a just conclusion in the matter, it is necessary to consider not merely the provisions of Act X., but also the position of ryots who had a right of occupancy prior to the passing of that Act. For if we shall find from the prior legislation, and from the earlier history of the country, that there was any known rule by which the rates to be paid by ryots who had a right of occupancy were ascertainable, that rule will form a legitimate and safe guide to the ascertainment of the rule which ought now to prevail. Act X. was not intended to be generally subversive of the old law. It was an Act mainly for the protection and benefit of the ryot—an Act "to re-enact with certain modifications the provisions of the existing law relative to the rights of ryots with respect to the delivery of pottahs and occupancy of land, to the prevention of illegal exaction and extortion in connection with the demands of rent, and to other questions connected with the same," besides extending the jurisdiction of the Collectors and providing for the easier recovery of arrears of rent. So that, where a question is left undecided by the express terms of the new law, we may well look to the former law to assist us in its solution.

I shall not enter upon the general history of the country prior to the Permanent Settlement. That history is referred to at some length in the judgment of Mr. Justice Trevor, and I shall only remark that it very strongly confirms the view which I take of the state of things prior to 1793, and which, I think, is shown by the Regulations of that year to have previously existed. As regards the legislation from 1793 down to Act X., it, in my opinion, shows clearly that the zemindar never was, and never was intended to be, the absolute proprietor of the soil. He never was proprietor in the English sense of the term, or in the sense that he could do with it as he pleased; for certain classes of ryots have at all times had rights quite inconsistent with absolute ownership, having rights which entitled them to remain in occupation so long as they paid their rents.

We learn from the Regulations that, prior to the Permanent Settlement, the rents had been from time to time settled and adjusted with reference to the produce of the land, so much of the produce of each beegah going to Government, and so much to the ryot. Whether in the name of rents or in the name of *abwabs* and irregular imposts, the rents were from time to time adjusted, and there was a pergunnah rate, or customary rate of the neighbourhood to refer to in case of dispute. In section 1 of Regulation II. of 1793, it is recited that the amount of revenue payable formerly was liable to frequent variation, that estimates were formed by public officers of the aggregate rent payable by the ryots, and of that aggregate rent ten-elevenths went to the Govenment and one-eleventh to the land-holder. So the preamble of Regulation XIX. of 1793 recites that, "by the ancient law of the country, the ruling power is entitled to a certain proportion of the produce of every beegah of land (demandable in money or in kind according to local custom), unless it transfer its rights thereto for a term or in perpetuity, or limit the public demand upon the whole of the lands belonging to an individual, leaving it to him to appropriate to his own use the difference between the value of such proportion of the produce and the sum payable to the public while he continues to discharge the latter."

Regulation I. of 1793 makes the Decennial Settlement perpetual, and declares (section 4) to the zemindars and other actual proprietors of land "that they and their heirs and lawful successors will be allowed to hold their estates at such assessment for ever." In section 7 it is said that the Governor General in Council trusts that the proprietors of lands "will exert themselves *in the cultivation of their lands*, under the certainty that they will enjoy exclusively the fruits of their own good management and industry." It is to be observed that it is to the *cultivation of lands* that the attention of the zemindars is directed,—it being open to them, as appears from other Regulations which came into force simultaneously, to make such arrangements as they pleased with new ryots as regards new lands not previously cultivated. Even on the face of Regulation I. of 1793, however, the zemindar was not absolute proprietor: for it is expressly stated in it that "to conduct themselves with good faith and moderation towards their dependant talookdars and ryots" is among the duties of proprietors of land,—

and section 8 reserves power to the Governor General in Council to enact such regulations "as he may think necessary for the protection and welfare of the dependant talookdars and other cultivators of the soil."

By Regulation VIII. of 1793, section 51, provision is made to prevent undue exactions from dependent talookdars, and the rules under which the amount payable by them may be enhanced are laid down. It is declared that they may be increased "by special custom of the district," or "by the conditions under which the talookdar holds his tenure." Section 52 enacts that the proprietor may "let the remaining lands of his estate under the prescribed restrictions, in whatsoever manner he may think proper." By sections 54 and 55 all *abwabs* and other irregular imposts on the ryots are directed to be consolidated with the rent, and it is forbidden to create any new abwabs or imposts of any kind. Section 56 says—"it is expected that in time the proprietors of land, &c., and the ryots, will find it for their mutual advantage to enter into agreements in every instance for a specific sum for a certain quantity of land." *Where it is the custom to vary the pottah* for lands according to the articles produced thereon and the parties shall prefer to adhere to the custom, the engagement between them is to specify the kind of produce, the quantity of lands, amount and rate of rent and term of lease, with other particulars. Section 57 enacts that "the rents to be paid by the ryots, *by whatsoever rule or custom they may be regulated*, shall be specifically stated in the pottah." Section 59 empowers the ryot to demand a pottah from the person from whom he holds. Section 60 declares that the pottahs of *Khoodkasht ryots are not to be cancelled*, except it be proved that "the rents paid by them within the last three years have been reduced below the *nirikbundi of the pergunnah.*" And section 62 provides for the appointment of putwarries,—one object of their appointment being *to prevent oppression of the persons paying rent.*

It will be seen that this Regulation teems with provisions quite incompatible with any notion of the zemindar being absolute proprietor. It will also be observed that the custom of the district and the pergunnah rate are referred to as furnishing the rule for fixing the rent to be paid by those having the right of occupancy.

Regulation XIV. of 1793, after expressing a fear lest foolish or vicious proprietors should grant pottahs at a reduced rent for a long term or in perpetuity, and so endanger the Government revenue, goes on to say that at the same time it is essential that the proprietors of land should have a discretionary power to grant leases and fix the rents of their lands for a term sufficient to induce ryots to extend and improve the cultivation, &c. Section 2 enacts that such pottahs shall not be granted for a period exceeding 10 years; and section 5 provides that sales for arrears of revenue shall cancel all pottahs to ryots and engagements with dependent talookdars (save as therein excepted), and that the purchaser may demand from the ryots, &c., *whatever the former proprietor would have been entitled to according to the established usage and rate of the pergunnah or district, had the cancelled engagement or lease never expired.*

I next come to Regulation IV. of 1794, which in its preamble recites that it is essential for the protection of ryots to adopt rules to determine disputes between them and proprietors "regarding the rates of the pottahs required to be granted by the Regulation VIII. of 1793, or the rates at which pottahs that may expire or become cancelled under Regulation XLIV. of 1793 are to be renewed." Section 6 provides that disputes regarding the rates at which pottahs under Regulation VIII. are to be granted are to be decided by the Civil Courts "*according to the rate established in the pergunnah for lands of the same description and quality;*" and section 7 enacts that ryots whose pottahs have expired or been cancelled under Regulation XLIV. of 1793 are not bound to take new pottahs "*at higher rates than the established rates of the pergunnah for lands of the same quality and description.*" They are entitled to renewed pottahs at the established rates as under Regulation VIII. of 1793.

Regulation IV. of 1808 has also been referred to in argument. It applies only to Benares. It relates to the appointment of Canoongoes, whose duties (amongst other things) were by section 6, clause 5, to compile information regarding pergunnahs, "articles of produce, rates of rent, rules and customs established in each pergunnah."

Another Benares law referred to was Regulation LI. of 1795, of which sections 9 and 10 are somewhat similar to sections 6 and 7 of Regulation IV. of 1794, which I have already mentioned. The conclusion of section 10 enacts that khoodkashts will be entitled to have their pottahs renewed *at the established rates*, as are also pykasht ryots, "provided the proprietor chooses to permit them to continue to cultivate the land which they have the option to do or not, as they may think proper on the expiration of all pykasht leases; whereas khoodkasht ryots cannot be dispossessed as long as they continue to pay the stipulated rent."

Regulation VII. of 1799, section 29, clause 5, enacts that any under-tenant whose lease is cancelled by section 5 of Regulation XLIV. of 1793, may be ejected if he will not renew as provided by the Regulations to which I have already referred.

The next Regulation which has been quoted is Regulation V. of 1812. Section 2 removes the restriction which prevented zemindars from granting leases for more than 10 years. Section 5 says—"There being reason to believe that the pergunnah rates are in many instances become very uncertain, the following rules shall be approved on all occasions of that nature" (*i.e.*, cases in which leases are cancelled by sales for arrears, under Regulation XLIV., 1793, section 5, &c.). Section 6 enacts that, "if any known established pergunnah rates exist," they are to be the test of the rates at which new pottahs are to be given: and section 7, that if no established rates of the pergunnah or local division of the country be known, pottahs are to be granted, &c., according to the rates payable for land of a similar description in the places adjacent; but if the pottahs of the tenants of an estate generally which may consist of an entire village or other local division, be liable to be cancelled under the above rules, new pottahs shall be granted at rates *not exceeding the highest rates paid for the same land in any one year within the period of the three last years antecedent to the period at which the leases may be cancelled.*

Regulation VIII. of 1819, while providing for the sale of talooks, &c., for arrears of revenue free from encumbrances, and free from all leases granted by the defaulting proprietor, provides nevertheless (by section 11, clause 3) that the purchaser shall not be entitled to eject "a khoodkasht ryot or resident and hereditary cultivator."

So in Regulation XI. of 1822 (which also relates to the sale of lands for arrears of revenue), section 32, it is enacted—"nor shall the said rule be construed to authorise any purchaser to eject a *khoodkasht kudeemee ryot or resident and hereditary cultivator having a prescriptive right of occupancy.*"

Again, by Act XII. of 1841, section 27, purchasers of estates sold for arrears may, &c., "enhance at discretion the rents of all under-tenures in the said estate, and eject all tenants thereof," except (1) istemrarees or mokurarees at a fixed rate 12 years before the Permanent Settlement: (2) tenures existing at the Permanent Settlement and not proved liable to assessment, &c.: (3) "lands held by khoodkasht or kudeemee ryots having rights of occupancy at fixed rents, or at rents assessable according to fixed rules under the Regulations in force." (4) &c.

This provision was re-enacted in Act I. of 1845, section 26.

These are the Regulations and Acts prior to Act X. which bear upon the subject. Having set forth in detail those portions of them which I think most material, it will be sufficient for me briefly to state the conclusions which I draw from them.

It appears to me, then, from these various enactments, and independently altogether of any history save such as they themselves relate, that zemindars never, at any time, were the absolute proprietors of their estates; but that they at all times have held subject to the rights of various classes of ryots whom the zemindar had no power to eject, so long as the proper rents were paid by them. The rent payable by some of those ryots was fixed and unalterable. The rent payable by others was subject to increase under certain conditions. Rents prior to the Settlement were fixed according to the produce of the land, so much of each beegah going to the Government as landlord, and so much to the ryot. The same principle prevailed after the Settlement, save that the position of the zemindar, as landlord between the Government and the actual cultivator, was distinctly recognised, and he was declared to be the proprietor of the land in a certain restricted sense. The rents were from time to time adjusted, and there was a pergunnah rate or customary rate of the neighbourhood (based on the original rule as to dividing the produce proportionately, and from time to time re-adjusted) to refer to in case of dispute, and according to these rates disputes were settled. Ryots who had a right of occupancy, but who were liable to have their rents increased, could not be enhanced above the pergunnah or customary rates. As regards new lands and persons not having a right of occupancy, the zemindars could make what arrangements they pleased. It is unnecessary here to decide to what precise extent such ryots coming in under special engagements, did or could acquire a right of occupancy. For the purposes of the question before me, I consider it enough to look only at the position of such ryots as had an admitted right of occupancy, but were liable to have their rents enhanced according to certain rules. It further appears from the Regulations that the adjustment of the pergunnah rates was much neglected,—probably owing to no great change having for many years taken place in the amount or value of produce,—and that there were no recently adjusted rates to refer to, and no customary rates to form any general guide throughout the country.

In this state of things Act X. was passed. It provides that persons having a right of occupancy shall be entitled to hold "at fair and equitable rates." It appears to me that, in the absence of any rule or guide contained in the Act itself, we may well, in considering what is fair and equitable, look at what was deemed to be "fair and equitable" in the case of per-

sons having a right of occupancy prior to Act X. Under the old law persons having a right of occupancy were not liable to have their rents increased, save according to the pergunnah rate or customary rate of the district. Finding that this rule has prevailed ever since the Decennial Settlement, and prior to it, I may well presume that the rates so ascertained are "fair and equitable." In my opinion where there has been any recent adjustment of the pergunnah rates, they should certainly be now followed. In the absence of any customary rates of the neighbourhood or pergunnah rates so recently adjusted as to form any distinct guide, I think that the rule of proportion, on which the pergunnah rates or custom of the district were undoubtedly originally based, is, in the present defective state of the law, the best rule to be adopted, subject to certain qualifications.

It has been contended that "rent proper" or "rack-rent,"—such a rent as would be obtained by putting the land up to competition,—is the only "fair and equitable" rent. But it appears to me that no such rent can possibly be fair or equitable, were it only for this simple reason that, in assessing the rent on that principle, nothing is allowed to the ryot for his right of occupancy. If he is to be rated on that principle, his right of occupancy must be ignored wholly, and he must stand precisely as he would have stood had he had no such right. The right, if it exists, must needs be worth *something*. Yet in none of the calculations made or suggested to the Court, on the footing of "rent proper" or "rack-rent" or competition, has anything been allowed him on this account: nor indeed could it be. That the Legislature intended the right of occupancy to be a valuable right, I do not doubt from the terms of Act X. How it is to benefit the ryot in any material degree, so long as it is merely to give him a preferential claim if no higher bidder comes forward, I am at a loss to see.

In my opinion the rule of proportion,—as the old value of produce is to the old rent, so is the present value of produce to the rent which ought now to be paid,—is the rule which should be adopted in the absence of any recently adjusted pergunnah customary rates. In so ascertaining the rate, we shall be ascertaining it on a principle similar to that on which the old pergunnah or customary rates were fixed. We shall be doing what was deemed fair and equitable in the case of ryots having a right of occupancy prior to Act X., and what is not less fair and equitable in the case of ryots having a right of occupancy under that Act. Let the zemindar seeking to enhance the rent go back to any year he chooses; let him go back to the last adjustment if he can,—if not, to any year which he thinks will suit his purpose,—and let him prove that the proportion was then more favourable to him than it has subsequently become. Either party should be at liberty, in each case, to prove any special circumstances tending to show that the application of the rule of proportion to that particular case would work injustice.

On the whole, the answer which I would give to the questions put, is in substance the same as that proposed by Mr. Justice Trevor,—in whose opinion as to Act X. of 1859 not being merely prospective in its operation, as indeed in the greater part of his judgment, I entirely concur.

Mr. Justice Phear.—This was a suit brought to obtain a kubooleut for three years at an annual jumma of Rs. 95-7-8 at the rate of Rs. 4 per beegah of land in the defendant's possession.

The plaintiff was auction-purchaser of the talook in which the land in question lay, and he alleged in his plaint that the defendant paid rent for the land at a variable rate; that the productive powers of the said land and the value thereof had without any exertion or agency of the plaintiffs increased at the time of filing the plaint; and that the lands adjacent to the subject of suit were rented at the rate sued for.

The defendant, amongst other things, denied these allegations.

The Court of first instance decreed the kubooleut at the rate sued for; and on appeal to the Judge he dismissed the appeal with costs.

The lower Appeal Court gave judgment in the following words:—

"The plaintiff sues to obtain a kubooleut at enhanced rates. The defendant alleges a "fixed rent from the time of the Permanent Settlement. The lower Court finds, on the ad-"missions of the defendant in another suit, that she pays to the 9 annas shareholder a different "rate than she admits now, and consequently holds that the rent of the tenure had varied as "regards one portion and therefore as regards the whole, and gives a decree at the rate of Rs. 4 "per beegah of 80 hâths, which appears to it equitable on the evidence.

"The defendant appeals both as to the alleged fixed tenure and also as to the rate. But "it seems that there is no proof on the record of a fixed rent having been paid for twenty "years to the plaintiff, and therefore this ground of appeal is relinquished. As respects the

"rate, I find that the witnesses on the part of the plaintiff state specifically that the rates "of which they speak refer to a beegah of 80 hâths, and that the judgment of the Lower "Court also refers to a beegah of that size. No evidence was brought by the defendant to "rebut this evidence, and it is not even argued here that the rate is wrong on a beegah of "that size, but that the current beegah in that pergunnah is 95 hâths; but the size of the "beegah is immaterial in calculating the rate.

"The judgment must be confirmed at the rate of Rs. 4 per beegah of 80 hâths. If the "defendant desire it in the execution of this decree, the land in her occupancy will be measured, "and the rent calculated accordingly.

"The appeal is dismissed with costs."

From this judgment the defendant specially appealed to this Court, and the appeal first came to be heard before Campbell and E. Jackson, J.J. On behalf of the defendant it was then urged—

1st.—That the lower Appellate Court was in error in saying that there was no evidence to make out the defendant's right to the presumption of fixity of rent.

2nd.—That there is no proper finding of the lower Appellate Court on the question of increased value.

3rd.—That the decision of the Court of first instance, confirmed by the lower Appellate Court in respect to the rate of increase to be paid by the ryot, is based on no principle whatever.

Campbell and E. Jackson, J.J., dismissed the special appeal so far as it depended upon the first of the above grounds. But they upheld the second ground of objection, and decided that the case must consequently be remanded. And they further considered that there was such a conflict in the decisions of the several division benches of the High Court relative to the principle to be followed in assessing the rent to be paid by the ryot in cases of this kind as to render it highly desirable to have the opinion of the full Court upon the point, before sending the case back to the lower Court for its reconsideration. Under the circumstances, they referred the case to the full Court of 15 Judges for the determination of the two following questions:—

1st.—When there has been increase in value of the produce, and the zemindar is entitled to a new kubooleut from an occupancy ryot for an enhanced rent, at fair and equitable rates, is the fair and equitable rate to be awarded the rate which might be obtained by commercial competition in the market, or is it a rate to be determined by the custom of the neighbourhood in regard to the same class of ryots?

2nd.—If the customary rate of the neighbourhood has not been adjusted with reference to the increased value of produce, then on what principle is the enhancement of that customary rate to be adjusted?

The case has been argued before us at great length as befits its undoubted importance, and we have had the advantage of all the reasoning and illustration which the very able advocates of each side have brought to our notice. The answers to the questions seem to hinge on the interpretation to be given to the words "fair and equitable" as used in Section 5 of Act X. of 1859. And although the questions themselves are fairly specific, still they are, to say the least, but little comprehensive; and the way in which this case has come before us and has been treated by both sides in the discussion, obliges us to go beyond their limits and to attempt to enunciate the meaning of the words in question in the form of a general rule. We are thus prevented from confining ourselves to our legitimate function, namely, that of saying what is the effect of those words merely on the particular issue placed before us. I need hardly remark that the constitution and procedure of a Court of Justice is very ill-adapted to carry even that which is often termed judicial legislation beyond the facts of the case material to the issue which is before the Court for decision. The Superior Courts of England have uniformly refused to countenance any attempt made to induce them to transgress this limit. It seems to me, however, that we are now asked, and in some sense compelled, to take a very large step into the region of pure legislation. It is foreign to our ways of proceedings and of deliberation to undertake the framing of a declaration of law which shall be prospective, and have application to eventual and unascertained conditions of fact; and I can scarcely hope that the effort to do this, which we are about to make, can end in a result which shall be satisfactory.

A preliminary objection has been raised (for the first time in this Court) that Act X. does not apply to the case at all, inasmuch as it is said the defendant has no right of occupancy unless by virtue of Section 6 of that Act; and it is contended that the qualification of 12 years mentioned in that section cannot be taken to embrace time, any portion of which had expired before the Act came into force. I think this objection must be over-ruled. It has been supported by argument which certainly seemed to me to exhibit some disregard of the

distinction between "retrospective action" and present interference with vested rights; but fortunately it is now necessary to go into the merits of this discussion, because it is, I believe, the unanimous opinion of the Court that the words of the section are so strongly explicit as to leave no sort of ambiguity as to their meaning, and it is only in cases of ambiguity that recourse can be had to *à priori* presumption as an aid to construction. I conceive that the section in effect says, "Every ryot, who, at the date when the Act comes into operation, "has been, or at any date thereafter shall have been, in continuous occupation of land for the "period of the preceding twelve years, whether that period comprises time which elapsed before "the date of the Act coming into operation or not, has, from the time of the completion of the "twelve years, a right of occupancy of the land."

This being so, the suit is rightly brought under the Act, and it becomes necessary to see what the general scope of the Act is, so far as it concerns the settling questions of rent between landlord and tenant, in order to ascertain whether any guide is afforded by it to the "fairness and equity" of Section 5. The result in my mind of the best consideration I can give the matter, aided by the very full discussion which has taken place, is that these words are not directly referable to, or dependent upon, the provisions of Section 17. I think the legislative effect of the Act upon the subject before us may be fairly summed up and arranged in the following manner:—

All ryots are entitled to receive pottahs (section 2), and—

(I) Ryots having rights of occupancy (*a*), who hold lands at rates which either have not been changed, or must by law be presumed to have not been changed, since the time of the Permanent Settlement, are entitled to receive their pottahs, at those *fixed rates* (sections 3 & 4).

(*b*). Who do not hold land at any such invariable rates are entitled to receive their pottahs at *fair and equitable* rates (section 5).

(II) Ryots not having rights of occupancy are entitled to pottahs only at such rates as may be *agreed on* between them and the persons to whom the rent is payable (section 8).

On the other hand, every person who grants a pottah, or *tenders* one, such as the ryot is *entitled to receive*, is entitled to receive a kubooleut (section 9).

Provision is made for enabling the parties to enforce this right to a pottah and kubooleut respectively, by the agency of a suit before the Collector; and in my judgment these rights are correlative. In the suit for the kubooleut, the main question must always be whether the corresponding pottah is such as the ryot is entitled to receive; and as it has been judicially decided that the commencing the suit is sufficient evidence of the tender of the pottah, the issue between the parties comes to be the same whether proceedings are first instituted by the ryot or by the zemindar.

It is said that, although a pottah for a term of years may be sued for by the ryot at any time, yet the most that the landlord on his side can do is to sue for a kubooleut of an indefinite pottah which shall fix the rent for one year or until the ryot objects; and in support of this contention, the difference in the wording of Sections 80 and 81 is referred to; also Section 76 is relied upon as showing by implication that the Legislature only gave the Collector power to fix the term in the case of a ryot's suit. But if this be so, what authority has the Collector in a suit for a kubooleut to fix the rent for a year even, or from year to year, until the ryot objects? As I have already said, I think the Act makes the landlord's right to a kubooleut correlative to, and co-extensive with, the ryot's right to a pottah, and I do not myself see sufficient in the difference of phraseology just mentioned to lead to a contrary inference; and I may remark that this right of suit for a kubooleut does not give the zemindar, as might at first seem to be the result, a new right of compelling the tenant to occupy the land for a coming term of years whether he is willing to do so or not, because Section 19 expressly enables the ryot in *all* cases, by giving proper notice, to throw up his holding whenever he likes.

The right to bring a suit of this kind is in fact a right to oblige the other side to submit to the arbitration of the Collector with regard to the terms upon which the holding shall be continued; and I see nothing in the Act to prevent this arbitration being invoked at any time when either party is dissatisfied with the existing relations between himself and the other, or on as many occasions in succession as the dissatisfaction may arise. The agricultural year always, I believe, commences with the month of Bysack, and tenant holdings, whether by contemplation of the regulations or by custom of the country, never involve fractions of years. Consequently, the Collector's decision would generally, unless by the express consent of the parties, take effect from the beginning of the ensuing year. If, at the time of the application to the Collector, a pottah is subsisting (whether it originated in agreement between the parties, or in a suit) comprehending a definite term which will not have expired at the end of the current year it ought, probably, except in extreme cases of hardship, to bar the appli-

cant's claim. In all other cases, I conceive the bringing of the suit is intended by the Legislature to be sufficient notice on the part of the plaintiff to terminate the existing agreement as to rent at the end of the current year.

As to the current year, or the preceding year, supposing time not to have barred the landlord's right to recover in respect of it :—

(A) If a written pottah *for a term of years* be in force, then the rent is fixed by that.

(B) If such a pottah, for any reason, be not in force, then the rent is that of the previous year, *unless* the landlord had, in or before the month of Cheyt which preceded the year in question, served on the tenant *notice of enhancement* and the grounds thereof, and the tenant either has not contested his liability, or, contesting it, has failed, in which case the rent is recoverable on the terms of the notice (section 13).

In the event of the ryot contesting his liability before the Collector, the latter must, I suppose, though I still feel hesitation as to this point, be guided to his judgment by considerations of "fairness and equity" whatever those words may mean as used in the 5th section; and if the ryot be one having a right of occupancy, those considerations must have exclusive relation to the grounds of enhancement mentioned in section 17, and also relation to those of abatement in Section 18.

Again, the ryot may at any time formally complain to the Collector that the rent *demanded* of him is too high.

On the whole, then, I conceive the Act intended to give each side two modes of seeking relief against the other, namely :—

1*st*.—That of obliging him to enter into a prospective written agreement.

2*nd*.—That of adjusting the terms for each year, as the occasion arises.

It may well be that the Legislature, while it desired that every opportunity should be given for the creation, at the instance of either party, of leases for terms of some definite duration, yet felt obliged, by the character and circumstances of the cultivators, and the physical conditions of the country, to leave an opening for annual adjustment by judicial intervention.

The case before us falls under the first head only, and I conceive that we are in effect asked to direct the Court below what circumstances are to be looked at, in judicially fixing the terms of a pottah as regards rent, such that it may be *fair and equitable* between the parties within the meaning of Act X. of 1859, the pottah being prospective and commencing with the ensuing year, and the tenant being a ryot having a right of occupancy.

The Act itself does not anywhere say expressly what the Legislature intended this fairness and equity to have regard to.

I do not consider that section 17 has any bearing on the point. In my judgment that section relates solely to what I will venture to term the *de anno in annum* process of section 13; it is clear that sections 14, 15, and 16 are necessarily confined to that, and section 17 appears, as regards its subject-matter, to follow them in natural sequence. The word "enhancement" used in it must, as it seems to me, mean the technical enhancement of section 13, in which section the word occurs for the first time in the Act, and can have no relation to any increase on a former rent, which may be the result of fixing a new rent in a suit for a pottah or kubooleut.

In the absence, then, of any legislative instruction on the point, I think we ought to so construe the words "fair and equitable" as to disturb as little as possible the relation which obtained between the parties before, or independently of, the operation of the Act so far as it can be ascertained. And this relation differs, as I conceive, with each separate case, so that it is impossible for us to lay down a single rule of assessment to be followed in all cases alike. On the one side, it has been contended for the zemindar that he has always possessed the right to exact a rack-rent from the ryot, and that the Court ought not, in fairness and equity, to recognize any principle of assessment which would not strictly lead to such a rent. On the other side, it has been urged with equal force that the ryot has been always entitled to some definite share of the produce of the land, and therefore the Court ought to lay down an inflexible rule of proportion. I do not think that either of these courses would be fair and equitable to the parties. In my judgment, the zemindar's contention cannot be *universally* supported for two reasons—

1st.—Whatever may have been the abstract rights intended to have been conferred upon the zemindars by the Regulations, in practice they have, generally speaking, never been exerted to the extent of producing a rack-rent. This is hardly denied by any one; and the very considerable margin which any calculation of a rack-rent exhibits beyond that which the landlord even ventures to claim in litigation, sufficiently supports this position. If any principle of competition has ever (at any rate for the last 70 years) found play, it has done so in the face of

such local public opinion or custom or has, in the majority of cases, modified its results to an extent that cannot readily be allowed for in calculation.

2nd.—It is impracticable, under the circumstances of these cases, to make, *ab extra*, an assessment of the true, or even approximately true, rack-rent. The various formulas of the political economists for a farming rent are but so many analyses of the result of free competition; at best, they only express the amount of rent in terms of other elements, which are themselves the results of free competition. If the free competition never existed, or, having once existed, has in any manner been put an end to, the element depending upon it cannot be ascertained. The right of occupancy itself seems, then, to be a great stumbling block in the way of working any politico-economical formula, and certainly (independent of anything introduced by the new Act) there has, as it seems to me, been no such open market bearing upon the value to be given to the ryot's skill, the amount of risks run by him, the profits obtainable by the application of his capital to other pursuits (or in other modes), &c., &c., as is capable of producing trustworthy data for getting at what would be the market rent, on the hypothesis of a free competition for the land which does not now exist. And indeed I cannot help thinking that there is a fundamental mistake at the bottom of all the calculations which have been made for this purpose. It has been attempted to estimate the rent payable by the ryot to the zemindar on the footing of its being a proper farming rent, such as is given birth to where there is a limitation of the mode and dependent upon the amount of profit to be got by the investment of capital, and no other limitation. But the condition and circumstances of the ryot, as I understand them, are not such as to give rise to a farming rent; his capital, when he has any, is so small, and his hereditary habits of life such, that (speaking of him as a class) he seems generally to have no alternative but to cultivate the land. He cannot carry himself and his capital into other markets, or at any rate, never to any appreciable extent, thinks of doing so. The profits derivable from his skill, labour, and capital never have affected the rent he pays, nor, economically considered, ought to do so. His tenancy, if of a competitive character at all, is of the nature of a *cottier* tenancy, in which the rent is purely the result of the relation of the numbers who want the land on one side to the supply of land on the other; and the numbers who want the land are in no way determined by the profits obtainable by the investment of capital and skill. No other class than this ryot class is seeking the land, and consequently the rent cannot possibly be got at by any process other than actual competition. And it is worth remarking that the result of this will be that if the numbers of the ryots wanting land are small, relatively to the quantity of land wanting ryots the tenant may well get a portion of the profits of the soil, which, under the estimate of a proper farming rent, would go to the landlord.

I can as little agree to the general rule contended for by the ryot as I can to that of the zemindar, because I do not think that the former has at all established any definite claim in *all* cases to a proportionate part of the produce of the land.

A third alternative has had prominence given to it during the discussion of this case, which, as far as I am able to give it expression, seems to be this, namely, that by some sort of natural equity the tenant ought only to get so much of the profits of the land as is attributable to the application of his labour, skill, and capital, and that the landlord as owner of the soil ought to get all the rest. I am convinced that a doctrine so vague as this finds no countenance in any writers on political economy, and a little reflection shows that it is practically inapplicable. It is physically impossible to separate the part of the produce which is due to the tenant's exertions, from that which is the result of the intrinsic qualities of the land; without land and without cultivator alike, there would be no agricultural produce at all, and it is simply absurd to attempt in any case to distinguish that which is due to the one cause from that which is due to the other. In fact, the sharing of the produce between landlord and tenant never has been, and never can be, based on any consideration of this kind; and there is nothing inherently inequitable in an arrangement, which may, in the estimation of those accustomed only to farming rents, give the tenant even an apparently extravagant portion of the produce.

With the view I take, it is not at all necessary to discuss the question as to what are the respective rights of khoodkasht and pykasht ryots. I think every case must turn on its own attendant circumstances.

When the Collector is called upon in any given case to determine the rent which it is fair and equitable that the ryot should pay, he ought to enquire—

1st.—Whether at the last antecedent period, when the arrangement between the parties (either then created or previously existing) was such as must, by reason of tacit acquiescence or, otherwise, be taken to have been fair and equitable, that arrangement contained express stipulations as to rent: if so, then these stipulations, unless the reason for them is gone, should be followed in arriving at the rent for the new pottah. Under this head would be ranged all

actual rack-rent and cottier rent agreements, whenever any such have been come to: and if the Collector is called upon to act upon an arrangement of this kind, I can give him no alternative to looking at the actual market, because I believe, for the reasons I have already mentioned, that there is no other fair and equitable mode of arriving at competition rents in this country.

2nd.—If the Collector finds no express agreement to guide him, then must he ascertain whether the ryot is legally entitled by custom, based either on his personal *status*, or on the character of the land occupied by him, to any definite share of the produce of the land, or to any beneficial interest in it. If the ryot is so entitled, the rent must be adjusted accordingly.

3rd.—If neither express agreement, nor legal right in the ryot, be found to have determined the amount of rent, the last arrangement must, I conceive, have been governed by some locally prevailing custom, or the rent regulated, tacitly, according to some locally prevailing rates; and in that case I think the custom ought to be complied with, and the rates adhered to. It is obvious from what I have already said that these rates will, by the nature of the case, be almost invariably such as to give to the ryot's holding a beneficial character; and therefore I think the fair presumption will be, in the absence of evidence or unless a different foundation be actually shown, that the rate was originally based upon the principle of sharing the produce of the land between the ryot and zemindar in a fixed ratio. Many of my learned brothers are of opinion that this is not properly a presumption of fact, but is in truth a matter of legal right established by history. I confess that I feel great difficulty in seeking and ascertaining law from such a source: and further I am reluctant, while acting judicially, to pledge myself to the acceptance of any particular version of a history which notoriously rests upon most imperfect materials. Under these circumstances, although my conclusion on this point is, I believe, practically in unison with that of the majority of my colleagues, I regret that I cannot place it on the foundation which they have chosen, but am compelled so far to separate from them as to rest it solely on a presumption which I consider to be natural and justifiable, quite independently of any history whatever. The result of applying this presumption would be that the new, fair and equitable rent would be the same proportionate part of the new produce that the old rent was of the old produce.

And I further think that, in all cases, the duration of the intended pottah must be taken into consideration as an element affecting the question of fairness and equity.

By proceeding in the manner I have attempted to sketch out, the Collector will, I believe, be enabled to determine what rent would be fair and equitable between the ryot and his landlord within the meaning of the Act. And I think, under the peculiar circumstances of this case to which I have already alluded, I cannot usefully put my answers to the questions submitted to us into a less general shape.

Mr. Justice Campbell.—I entirely concur with Mr. Justice Trevor, except in the use of any expression which might seem to imply any doubt whether a ryot possessing right of occupancy can be, in any shape, subjected to enhancement on any ground other than those mentioned in section 17, Act X. of 1859. Though this question does not properly arise on the limited reference of the Division Bench, it has been argued that, in such a suit as this, for a kubooleut at an enhanced rate, the zemindar is not restricted to those grounds. I am decidedly of opinion that he is limited to the grounds mentioned in section 17, in whatever shape he sues or can sue.

The provisions of section 6, Act X of 1859, are so entirely declaratory in their terms, and in that sense would seem to define so unambiguously the class of ryots possessing rights of occupancy, while the old Regulations explain so clearly the status of occupant ryots, that it might seem at first sight unnecessary to go further back into historical retrospects with a view to determine the character of their rights. But it has been thought necessary to open up this enquiry with a view to show that in fact the occupancy rights of the present day are not of the character which is claimed for those of ancient days, or that we must, at any rate, distinguish between different classes of ryots, whom Act X. of 1859 has included within a too wide definition. It would seem to be assumed that the old ryots and their descendants never had very high rights; that, whatever they were, they have for the most part died out; that the occupancy ryots of Act X. of 1859 are, as a body, the creation of that Act; and that occupancy tenures must be treated as so created for the first time, and the Act construed as if it merely conferred certain limited tenant rights upon those who before held as tenants at will. To test these arguments some historical survey has become necessary.

I take the same general view as Mr. Justice Trevor with regard to the history and nature of landed tenures in Bengal before the Permanent Settlement. There can be no doubt that the Settlement attributed to Tooran Mull (and alluded to by Mr. Justice Trevor), like all the settlements of Akber and his successors, and, indeed, all the detailed settlements of the British Government founded upon the same system, dealt primarily with the individual ryot, and fixed

the sum payable by him for the land which he cultivated. The process is described by Elphinstone, pp. 475-6. It appears that the average produce of the beegah of land of each description was ascertained, and the Government share was then calculated, one-third being the full demand, and deduction being made for fallows, occasional inundations and droughts, inferior soils, &c. The average dues of the State (in grain) being thus ascertained, the grain rates were commuted into money on an average of the price currents of the nineteen previous years, and the rates so obtained were calculated on the land of each ryot. The option of paying in kind according to the established proportion seems, however, to have been maintained. Thus the payments of the ryots were fixed by an act of State quite independent of the will of any other subject, or of any question of competition or relation of landlord and tenant in the English sense Whether the revenue was paid direct to the officers of Government, or by the village communities jointly through their headmen, or through hereditary zemindars of a superior grade, the quota due from each ryot was fixed and recorded ; that was the unit of the whole system from which all calculations started. The headmen and zemindars were remunerated for their services, or received the hereditary dues to which prescription entitled them in the shape either of percentages on the collections from the ryots, or of nankar land held exempt from revenue. That is clearly the old law of the country in general, and of Bengal in particular. Even when, in the decline of Governments, the State control became relaxed, and the ryots became subject to much oppression on the part of those placed over them, they still had some protection in the only ever-surviving law of the East—'*Custom.*' The old-established rates they have always continued to cling to as sanctioned by '*Custom.*' That custom the worst oppressors could not openly defy ; and hence, as shown by Mr. Justice Trevor, all extortions and imposts took the shape of extra cesses, levied on various pretexts. Even when thus, by oppression, the sums levied may have been raised up to or even beyond a rack-rent, the remark of Mr. Mill seems irresistible, that the shape in which they were taken and the survival beneath all imposts of the old customary rates, is the strongest evidence that the right of the ryot survives, to become again beneficial in better times.

That these rights survived in this shape in Bengal up to the time of the introduction of British rule there is the amplest evidence. Every early paper on the subject teems with evidence to show that the ryots were very much more than tenants-at-will, even where legal and illegal exactions had been imposed to the farthest on the proper or 'assal' rates.

Indeed, the concurrence of the early Regulations of the British Government in every different part of India, made at different times, under different circumstances, and by different Governments which, in other respects, differed most widely in their views on kindred subjects, would seem sufficiently to establish that under the old law and custom of India, as everywhere found on the assumption of territory by the British Government, some right in the soil still belonged to the ryot. However widely they differ in regard to superior rights of Government and the great landholder, they all concur in the view that neither the Government nor the great landholder had an absolute and complete right, but that some right was concurrently enjoyed by the ryot in the shape of a right of occupancy at rates regulated by custom.

On this general question, I would only further add to what Mr. Justice Trevor has said, that with reference to a frequent modern assertion that this alleged right is a mere invention or resuscitation of a benevolent British Government, I have sent for the three greatest and best authorities on the modern Native States in different parts of India—books which were written long before these discussions arose. I take Tod's Rajpootana for the North of India, Malcolm's Central India for the Centre, and Buchanan's Journey in Mysore (then under Native Government) for the South. I turn to the indices to see what is said of the ryots. I find the following :—

Tod puts their rights very high. He says (Vol. I., p. 494):—" The ryot (cultivator) is the proprietor of the soil in Mewar. He compares his right to the 'a'khye d'hooba.'" He calls the land his Bapota, the most emphatic, the most ancient, the most cherished, and the most significant phrase his language commands for 'patrimonial inheritance.' He has Nature and Menu in support of his claim, and can quote the text alike compulsory on prince and peasant—" Cultivated land is the property of him who cut away the wood, or who cleared and tilled it,—an ordinance binding on the whole Hindoo race, and which no international wars or conquest could overturn;" for, as the author a little farther on observes, we may " trace a uniformity of design which at one time had ramified wherever the name of Hindoo prevailed ; language has been modified, and terms have been corrupted or changed, but the primary pervading principle is yet perceptible."

Malcolm (Vol II., p. 25) says :—" The settled and more respectable hereditary cultivators of Central India have still many privileges, and enjoy much consideration. Their title to

the fields their forefathers cultivated is never disputed while they pay the Government share. If they are unable from age or want of means to till their field, they may hire labourers, or make it over to another person, bargaining with him as they like about the produce; but the field stands in the Government books in the name of its original tenant. In general, a fixed known rent and established and understood dues or fees are taken from such persons, beyond which all demands are deemed violence and injustice. These, however, have been of late so universal that the condition of the hereditary cultivators as compared with others has been little enviable."

Buchanan puts the right somewhat lower, and more like that recognized by our modern law.

He says (Vol. I., p. 124) :—" The ryots or farmers have no property in the ground; but it is not usual to turn any man away so long as he pays the customary rent. Even in the reign of Tippoo such an act would have been looked upon as an astonishing grievance."

Again, Vol. II, p. 90, after describing the different kinds of headmen or renters of villages, he adds :—" Neither can legally take from the cultivators more than the custom of the village permits. This custom was established by one of the Mysore Rajahs." And same Vol., p. 109 :—" A farmer cannot be turned out of his possession so long as he pays the fixed rent; but if he gives over cultivation the officers of Government may transfer his lands to any other person."

We might probably consider this to be a very accurate description of the old state of things in Bengal.

For an exact account of the state of things prevailing in Bengal at the time of the Permanent Settlement, and the terms on which the settlement was made, so far as the present question is concerned, it is really hardly necessary to look beyond the very text of the Regulations themselves.

The nature of the ancient rights of the ruler or superior landlord is thus shown :—

Preamble to Regulation XIX. of 1793.

Same words repeated. Preamble, Regulation XLIV. of 1793.

" By the ancient law of the country, the ruling power is entitled to a certain proportion of the produce of every beegah of land (demandable in money or kind according to local custom), unless it transfers its right thereto for a term or in perpetuity, or limits the public demand upon the whole of the lands belonging to an individual, leaving him to appropriate to his own use the difference between the value of SUCH PROPORTION of the produce and the sum payable to the public, whilst he continues to discharge the latter."

Preamble to Regulation II. of 1793.

Regulation I. of 1793, Section 7, Clause 1.

Previously to the Permanent Settlement, the zemindars had very limited rights, and were liable to be capriciously dispossessed, and arbitrarily assessed upon on account of their gross receipt. "The amount of assessment was fixed upon an estimate formed by the public officers of the aggregate of the rents payable by the ryots or tenants for each beegah of land in cultivation, of which, after deducting the expenses of collection, ten-elevenths were usually considered the right of the public, and the remainder the share of the landholders."

Regulation I of 1793, Section 7, Clause 1.

Same, Clause 2

By the Permanent Settlement the amount of assessment on the zemindars was irrevocably fixed; they were declared to be proprietors of the land, and they were encouraged to "exert themselves in the cultivation of their lands under the certainty that they will enjoy exclusively the fruits of their own good management and industry, and that no demand will ever be made upon them or their heirs and successors by *the present or any future Government* for an augmentation of the public assessment, in consequence of the improvement of their respective estates."

Regulation I. of 1793, Section 8.

But general reservation was made that "the Governor General in Council will, whenever he may deem it proper, enact such Regulations as he may think necessary for the protection of the dependant talookdars, ryots, and other cultivators of the soil."

Hence it appears that the rights, first of the ruling power, and eventually of the zemindars, to whom those rights were assigned, consisted in the share of the produce of every beegah liable from the ryots in money or kind according to custom.

Regulation VIII. of 1793, Section 52.

The zemindar also acquired the power "to let the remaining lands of his zemindaree or estate *under the prescribed restrictions* in whatever manner he may think proper."

The zemindar therefore took the estate, subject to certain restrictions, in addition to his obligations to discharge the Government revenue. What then are these restrictions?

The zemindars are to grant pottahs to the ryots, which "shall be specific as to amount and conditions. The rents paid by the ryots, by *whatever rule or custom they may be regulated*, shall be specifically stated in the pottahs, which, in every possible case, shall contain the exact sum to be paid by them. He (the zemindar) shall, in concert with the ryots, consolidate the impositions under the name of abwab, mhatoot, and other appellations with the *assal* into one specific sum," and he shall not "impose any new abwab or mhatoot upon the ryots under any pretence whatever. A ryot, when his rent has been ascertained, may demand a pottah," and the pottahs must all be settled by the end of the year 1198.

Regulation VIII of 1793, Sections 52, 54, 55, 57, and 59.

Again, all leases made previous to the conclusion of the settlement (and not obtained by collusion, &c.) are to remain in force till their expiration, and "no proprietor shall cancel the pottahs of the khoodkasht ryots except upon proof that they have been obtained by collusion, or that the rents paid by them within the last three years have been reduced below the narikbandee of the pergunnahs, or that they have obtained collusive deductions, or upon a general measurement of the pergunnah, for the purpose of equalising and correcting the assessment."

Regulation VIII. of 1793, Section 60 Ditto ditto.

Further, it was enacted that "if a dispute shall arise between the ryots and persons from whom they may be entitled to demand pottahs regarding the rates of pottahs, it shall be determined in the Dewani Adawlut of the zilla in which the lands may be situated, *according to the rates established in the pergunnah for lands of the same description and quality* as those respecting which the dispute may arise."

Regulation IV. of 1794, Section 6.

And, "The rules in the preceding section are to be considered applicable, not only to the pottahs which the ryots are entitled to demand in the first instance under Regulation VIII. of 1793, but *also to the renewal of pottahs which may expire*, or become cancelled under Regulation XLIV. of 1793; and to remove all doubts regarding the rates at which the ryots shall be entitled to have such pottahs renewed, it is declared that *no proprietors shall require ryots whose pottahs may expire or become cancelled under the last-mentioned Regulation, to take out new pottahs at higher rates than the established rates of the pergunnah for lands of the same quality and description, but that the ryots shall be entitled to have the pottahs renewed at the established rates.*"

Regulation IV. of 1794, Section 7.

It is thus clear that, as regards the then existing ryots the zemindar had no power to fix rents at discretion, but was bound to consolidate the established "assal" and "abwab" into one sum, "in concert with the ryots," to give pottahs for the sums so ascertained, and to renew expired and cancelled pottahs; that all disputes regarding the rates were to be settled by the Courts according to the established rates of the pergunnah; and that, at any rate with respect to "khoodkasht" ryots, the zemindar had no power to cancel or refuse to renew pottahs once granted, or to eject the ryots. Rents were absolutely and entirely regulated by custom, and not by competition.

By another Regulation zemindars were declared not competent to "fix at any amount the jumma of an existing dependant talook for a term exceeding ten years, nor to let any lands in farm, nor to grant pottahs to ryots or other persons for the cultivation of lands for a term exceeding ten years." But this provision was subsequently repealed with retrospective effect by Regulations V. of 1812, Section 2, XVIII. of 1812, Section 2, and VIII. of 1819, Section 2, by which all such leases were rendered valid and legal, and zemindars were declared competent to grant pottahs at any rent for any term. The object of the original enactment was not to prevent the zemindar's setting permanent ryots at the pergunnah rates, but to prevent his granting improvident leases below those rates; for, as observed by the Privy Council in a late case turning on another part of the same Regulation, and with respect to such restrictions—"their meaning is properly to be collected from the policy and intent of the Regulation. The object of the Government was that the jumma should be duly paid, and that the means of paying it should not be withdrawn by improvident grants. The power given to the purchaser supposes the taluqdars and the ryots to remain in all respects as before, except that they become liable to a certain limited increase of rent according to the established usages and rates of the pergunnah or district." The power of the proprietor himself was certainly not greater than that of the auction-purchaser. As observed by Lord Cornwallis in his Minute,—

Regulation XLIV. of 1793, Section 2.

Privy Council decision: Ranee Surnomoyee *vs.* Moharaja Suttes Chunder Roy, 23rd July 1864.

"The rent of an estate can only be raised by inducing the ryots to cultivate the more valuable articles of produce, and to clear the extensive tracts of waste lands."

Looking to the expressions regarding the expiry and renewal of pottahs, and the advan-

tage to be derived from more valuable articles of produce, I imagine that the framers of the early Regulations very probably contemplated periodical re-adjustment of rates between zemindars and ryots with reference to the value of produce, in the same way as was originally contemplated in Akber's settlements (Elphinstone, p. 476), the plan of which was that the money rates were to be fixed every ten years on the average rates of the preceding ten, that is, the grain rates remaining the same, the money rates were to be adjusted in proportion to the average price of grain. But no express provision was made to this effect in the Regulations of 1793.

It being then clearly established that, by the terms of the Permanent Settlement, the zemindars are not made absolute and sole owners of the soil, but that there were only transferred to them all the rights of Government, *viz.*, the right to a certain proportion of the produce of every beegah held by the ryots, together with the right to profit by future increase of cultivation, and the cultivation of more valuable articles of produce; it being further established that the khoodkasht or resident ryots retained a right of occupancy in the soil, subject only to the right of the zemindars to the certain proportion of the produce represented by the pergunnah or district rates, we have next to consider the changes which occurred between the Permanent Settlement and the passing of Act X. of 1859. Little material change was made by the Legislature. The declaration of Regulation V. of 1812, that, where pergunnah rates were no longer clear, the term "rates payable for land of a similar description in the places adjacent" should be substituted, is a mere accommodation of the existing law to the march of society. The only material change affecting certain estates is to be found in the gradually increasing stringency of the Sale Laws. During the first generation subsequent to the Permanent Settlement all new khoodkasht ryots settled by the proprietors on waste or other lands were in case of sale absolutely protected. The purchaser could neither evict them nor enhance their rents beyond the customary rates; he could but take rent "according to the established usages and rates of the pergunnah or district." But by the Regulation XI. of 1822, this protection is narrowed to the case of any khoodkasht kudeemee (old khoodkasht) ryot or resident and hereditary cultivator having a prescriptive right of occupancy." Perhaps we may infer that the purchaser acquired the right to terminate all other tenures created since the settlement, and to evict the holders. Still, as in truth this right of eviction was scarcely ever exercised, and it appears that, if not exercised, the purchaser was still limited to the pergunnah rates "according to the law and usage of the country," the practical effect of this Regulation does not seem to have been great as respects the question now before us, and it is therefore hardly necessary to enquire what was the exact term of prescription which then made a man an *old* khoodkasht ryot.

Regulation XLIV. of 1793, Sec. 5; IV. of 1794, Sec 7; VII. of 1799, Sec. 29, Clause 5: Privy Council decision in case of Ranee Surnomoyee, already quoted.

Regulation XI. 1822, Sec. 32

Regulation XI. of 1822, Sec. 33.

By the later Sale Laws, Acts XII. of 1841 and I. of 1845, stringent provisions were introduced. Protection was given to "khoodkasht or kudeemee" ryots, but the purchaser had power not only to evict, but also to enhance at discretion the rents of all other ryots The sales under this Act were, however, comparatively few.

It may here be observed that in truth, in the later enactments, the word "khoodkasht" is so variably coupled with other terms "kudeemee," "resident," "hereditary," "resident and hereditary," that it became very difficult to say who were privileged against auction-purchasers, and who came within the various descriptions of khoodkasht ryots. But I have no doubt that, as explained by Mr. Justice Trevor, the original khoodkasht of the early Regulations was simply the resident ryot permanently settled in the village as opposed to the py-kasht ryot The two words khoodkasht and pykasht are used as correlatives, and as between them including all ryots.

Such being the laws, it may be conceded that, from the time of the Permanent Settlement, the zemindars have been free to make such arrangements and contracts as pleased them regarding all land in which no rights were held by ryots or others at the time of the Settlement, or which at any time might lapse by the failure or abandonment of the ryots, subject only to this that a man once admitted on an ordinary khoodkasht tenure, without limitation of time, could not be ejected or enhanced beyond the customary rates, except in certain cases by an auction-purchaser. The question is, what in fact did the zemindars do? Did they, by the investment of capital, cultivate the waste for their own benefit? Did they take every opportunity of asserting an absolute right in every field that lapsed, and farm it out on true commercial principles? Or did they in truth adhere to the old practice and custom of the country, and seek to increase the rent-roll, merely by settling new ryots on the old customary terms, leaving them to cultivate in their own way, and to occupy the land without limitation of time, subject to the

payment of the rents established by the custom of the locality? It is notorious and well established by history, both general and judicial, that the latter was almost the universal rule. The zemindars did not invest capital in agricultural operations after the modern fashion. They did not seek to get rid of the old ryots and the old system, and to establish large commercial farms. On the contrary, the endeavour was to get new ryots. Ryots were considered to be the only riches, and the struggle of a good landlord was not to get rid of the ryots, but to tempt away another man's ryots by the offer of favourable terms. The ryot who was settled on waste or other ryotee land cultivated it, stocked and furnished it, built his house, and dug his tank at his own expense, or by his own labour. Hence it naturally followed that, according to the ancient custom and present understanding between the parties, the new ryot who permanently settled in the village as a khoodkasht or resident ryot, acquired all the rights, privileges, and immunities accorded by usage to khoodkasht ryots. The ryots so settled were protected in the first instance by law in case of sale, and after the passing of Regulation XI. of 1822, they were in practice protected by habit and the interest of the purchaser, and resumed their former status. Of resident ryots, only the few who may have come in under special contracts at variance with the custom, or whose tenures passed under the Sale Laws of 1811 and 1845, held on any other than the customary terms. In every case that comes before us it is patent that, up to the present day, rents in Bengal are usually regulated by the customary rates; sometimes in the shape of pergunnah rates, more generally in that of local rates, universally known in each estate or part of the country. Frequently, zemindars know nothing of their estates, have no clue to the actual positions of each jumma of ryot's holding, but simply collect on a paper roll showing the annual payment due from each ryot according to the custom.

But were the customary rates varied or enhanced, or how were they regulated? It seems a somewhat singular omission that in the Regulations no provision is made for any enhancement of the pergunnah rates payable in money. The customary or pergunnah rates were of three kinds:—

1. Grain rates, being the original share of the produce not commuted into money, and which generally continued to prevail in the province of Behar.

In this case, as the value of the grain increased,—if taken in kind, it fetched more money,—if annually struck in money at the market rates, more money was received,—there was no need of any special provision for enhancement. The rent, as it were, enhanced itself.

2. & 3. Money rates, more common in Bengal, *i. e.*, when the grain rents were commuted into money in either of two ways which are distinguished in Section 56, Regulation VIII. of 1793, as follows:—

2. "Where it is the custom to vary the pottah according to the articles produced thereon" (on the land), that is, there were established rates not for each kind of land, but for each kind of produce,—so much per beegah for rice, so much for wheat, so much for cotton, so much for sugar-cane. In this case the zemindar would benefit by the substitution of more valuable for less valuable articles of produce; but the kind of produce remaining the same while it increased in value, he would not benefit.

And 3. The system which it was hoped would ultimately prevail where the rates were fixed not on each kind of produce, but on each quality of land, and thus there was fixed "a specific sum for a certain quantity of land, leaving it to the option of the ryots to cultivate whatever species of produce may appear to them likely to yield the largest profit." In this case, it is evident that, without some mode of enhancement, the zemindar would benefit neither by the introduction of new products, nor by the rise in value of the old products. The expression in Lord Cornwallis's Minute, that the zemindars are to benefit by "inducing the ryots to cultivate the more valuable articles of produce," does not seem to occur in the Regulations; and as respects land held on these money rates, no provision for such benefit seems to be made. In truth, it seems very doubtful whether, if the khoodkasht ryots paying these specific money rates had stood together on the letter of the Regulations and steadily resisted enhancement, they ever could have been enhanced.

It is remarkable that, throughout the whole litigation of the long period between 1793 and 1859, no principle of enhancement, other than a reference to existing pergunnah or local rates, is anywhere to be found. There have been conflicting decisions as to the prescription, by which a right of occupancy was acquired, and great doubt was thus thrown on that subject; but as regards any rule of enhancement, either at discretion, or on any other rule, save and except the standard of rates paid by the same class of ryots in places adjacent, there is nothing. We have particularly drawn the attention of the Counsel on both sides to this point, and it is clear that there is no such case. When the customary rates were enhanced, it must have been done without the least assistance from the Law or the Courts of Judicature. In fact, however, the rates have generally been enhanced. The zemindars had great power over their ryots; the

interference of the law was but partial; the zemindars could do much without law; and the reliance of the ryots was much more on custom than on law.

Moreover, in this matter, the zemindars had a strong equity on their side. Although no rule of enhancement was laid down by the law, it seemed hard that as the relative value of produce and money altered, as produce became relatively more valuable and money relatively less valuable, the zemindar should continue to receive, as representing his share of the produce, a sum of money actually representing a smaller purchasing power, a smaller quantity of grain, and a smaller proportion of the produce. The fact seems to be that this contingency of a change in the relative value was omitted to be provided for.

But as the country progressed, and as the zemindar's expenses increased, without a corresponding increase of income, he had, according to custom and ancient rule, a strong equitable claim to a re-adjustment which should restore to him his own fair share of the produce. Power and equity being then combined, it is not wonderful that, in the absence of any regulated mode of adjustment, it was irregularly effected by various irregular devices resulting in compromise between the zemindar and the body of the ryots. As Harington puts it, "Every part of the transaction is a subject of contention; the demands on both sides are unreasonable, and are finally terminated by a compromise."

A common process seems to have been a mere repetition of the old process by which Torun Mull's assessment was enhanced. In spite of the prohibition against adding abwabs, or cesses, to the consolidated rates of the time of settlement, illegal cesses (almost always in the regulated form of percentages, so many annas or pie in the rupee, or so many seers in the maund) were from time to time added on, and gradually annexed to the custom: then as they became complicated and heavy, and led to resistance, compromise was effected, and the extra cesses were merged into a rate somewhat enhanced, to which the ryots consented. Then, as further increase of value took place, more cesses were super-imposed on the rates, and presently another compromise took place. Sometimes in one way and sometimes in another, the rates by mutual compromise and consent were from time to time enhanced, and the pergunnah rates were frequently split up into local rates special to estates and sub-divisions, according to the area of each new compromise. Still the new rates always had and have some local area. They were and are common to the body of the ryots of that locality. When the majority or body of the ryots had consented to an equitable compromise, an enhanced local rate was established, and refractory individuals could be and were raised to that standard.

The nature of the occupancy tenure of the ryots of the class under discussion, as it existed prior to the passing of Act X. of 1859, cannot be better described than in the words of the Right Honourable Holt Mackenzie, in his evidence before the Select Committee of the House of Commons in 1832—

"They may be generally described as cultivators possessing a fixed hereditary right of occupancy in the fields cultivated by them, or at their risk and charge; their tenure being independent of any known contract, originating probably in the mere act of settlement and tillage; and the engagements between them and the zemindar or (in the absence of a middleman) the Government officer, serving, when any formal engagements are interchanged, not to create the holding, but to define the amount to be paid on account of it. They cannot justly be ousted so long as they pay the amount of value demandable from them, that being determined according to local usage, sometimes by fixed money rates, or rates varying with the quality of the land or the nature of the crop grown—sometimes by the actual delivery of a fixed share of the grain produce—sometimes by an estimate and valuation of the same—sometimes by other rules; and what they so pay is in all cases distinctly regarded as the Government revenue or rent, whether assigned to an individual or not; in none depending on the mere will and pleasure of another. There are varieties of right and obligation which one could fully explain only by a reference to individual cases; but this is my general conception of the rights of the class whom I should consider the proprietors of the fields they occupy. In Bengal Proper they are usually called "khoodkasht ryots (*i. e.*, ryots cultivating their own), *and by this class of persons I believe the greatest part of the lands in that Province is occupied.*"

At the time of the passing of Act X. of 1859, then, the state of things was this. The tenures and rents of the ryots were still for the most part regulated by the old customs of former times. But two things especially required legal definition:

First.—There was doubt as to the mode or prescription by which a khoodkasht or occupancy tenure was acquired, and which tenures were of this character. It was not certain whether mere settlement in the village on the ordinary terms without limitation of tenure gave such a right, or what length of prescription established that right. The various Sale Laws had also introduced a large element of confusion, different estates being variously affected according to

the date of sale. And, what is perhaps most important of all, owing to the absence of public records in Bengal, the perishable nature of private evidence, and the discredit attaching to private documents and oral evidence in this country, it was very difficult to prove whether a ryot's holding was really ancient or what was the date of its creation; the oldest holdings were imperilled by the absence of reliable proof.

Second.—There was an entire want of any regulated and defined legal mode of enhancing the customary money rates.

Setting aside re-enactments and details, the most important provisions of Act X. referred to these two points.

Section 1 expressly repealed the existing Sale Laws so far as they gave rights of ejection and enhancement beyond the customary rates.

Section 6 declared that 12 years' holding was to be taken as the test of a prescriptive right of occupancy, unless the presumption was contradicted by an express written contract (section 7). That was a protection in favor of the ryot, settling all doubt as to the rights of those who had held so long.

Sections 5, 13 and 17 declared the right of the zemindar to enhance the rents of all tenures which had either submitted to enhancement since the Permanent Settlement or had been created without specific stipulation since that period, provided it was proved that the former rent was not fair and equitable, and that the grounds of enhancement should be confined to certain particular grounds specified in section 17.

At first it appears to have been intended to confine these grounds to two, in accordance with the letter of the old Regulations, *viz.* :—

1. That the rent paid by any ryot was below the prevailing rate paid by the same class of ryots in the places adjacent; and

2. That the ryot held more land than he paid for.

But before the Bill finally passed, a third very equitable ground of enhancement was added, giving the zemindar the right to claim an increased rent in consequence of the increased value of the produce,—an increase which both the old custom of division of produce would have given him, and the subsequent practice had in fact without express provision of law more or less given him. Enhancement might henceforth be awarded on the specific ground "that the value of the produce or productive powers of the land have been increased otherwise than by the agency and at the expense of the ryot." This was a new provision in favour of the zemindar.

It appears, then, that the principal provisions of Act X. were in fact those by which on two points the hitherto rough and somewhat uncertain unwritten practice was reduced to definite law—in one case, in favour of the ryot, by defining the prescriptive right of occupancy—in the other in favour of the zemindar, by acknowledging the right to enhancement on the ground of increase of the value of produce. It is with this latter provision that we have now to deal. Unfortunately the law, while stating the ground of enhancement, does not exactly specify how it is to be applied. Hence the present difficulty.

Taking the words of Section 17 alone, enhancement may, it is argued, be applied in three ways:—

First, Mr. Doyne seems to argue that, when increase of value has occurred, the old rent is as it were expunged, and a new rent is to be fixed without any reference either to the amount of the old rent, or to the amount of increase in value, or to the custom, but simply at the competition or market rate which the land would fetch in the market—at the rate which any person bidding on purely commercial principles would give for it. But the Judges of this Court seem now to be all agreed that the nature of an occupancy tenure and the provisions of Act X of 1859 altogether negative this extreme doctrine of competition rates; that in fact the increase of rent must in some shape or other be measured and limited by the increased value of the produce when that is the ground on which increase is sought.

It remains, then, only to decide on the remaining modes of applying this ground of increase, *viz.*—

Second, the whole increase in the value, after deducting the actual increase in cost of production, may, it is said, be given to the zemindar; or

Third, the rent may be increased in the same proportion as the value has increased, so that the relative situation of the parties may remain as before, and if there were profit shared between them under the old arrangement, any new profit may also be shared between them.

To decide this question, it has been thought necessary to go beyond the Act itself. The view which seems to have been taken by the learned Chief Justice in Hill's case, and which is now supported by Mr. Doyne, is that Section 6 must be considered not to be in any respect a definition of pre-existing rights of parties having different interests in the soil, but a new provision— a sort of benevolent interference between the absolute owners of the soil and the tenants who had heretofore held under them at their mere will—an interference with vested

rights of property on one side in favour of those who had no rights whatever on the other side, in violation of the ordinary rules of Property and Political Economy; that, therefore, such a provision must be construed very strictly in favour of the old proprietor and against those on whom these new rights were thus arbitrarily conferred; and that, under such a construction, the ryots can only have the rights of occupancy expressly given to them, while the zemindar must take in the shape of rent all the beneficial interest created by change of circumstances. At any rate, it seems to have been considered by the learned Chief Justice that, if any ryot claims any higher right than that above expressed, he must prove it altogether independent of the provisions of Act X.; that upon him lies the whole onus of proving some ancient tenure and custom prior to the Permanent Settlement under which he can claim some other rate.

I cannot take this view of the nature and intent of Section 6. Its form is altogether declaratory. It may be, and probably is, the case that in substituting for the previous uncertainty a new and comprehensive definition, some persons were included in the terms of the definition whose claims were not before well established; but it seems to be quite beyond doubt that it was the intention of the Legislature to declare existing rights, not to create wholesale an entirely new class of rights. No general right of occupancy is given to all tenants who have held for 12 years. By the terms of Section 6, express exception is made in regard to 'land belonging to the proprietor of the estate of tenure," that is, land is absolutely owned by him as distinguished from the ryotee land. When such land called "khamar, neejjote, or seer, is let either for a term, or year by year, as also when the land of occupancy ryots is sub-let by them, no length of holding gives a right of occupancy. Further, as respects ryotee land, by the express provisions of Section 7, every written contract inconsistent with the right of occupancy overrides all claim to such right, it being reasonably assumed that, in the absence of express written contract, the ordinary custom prevailed and the ordinary prescription ran. The declaration establishing a test by which the right of occupancy is to be tried only affected those cases in which there was nothing, either in the character of the land or in the written contract, to contradict that declaration.

If there could be any doubt as to the intention of the framers of the Act, as evidenced by the declaratory form of the words, it is set at rest by the actual recorded expression of those intentions. Among the papers printed and put into our hands on the trial of this case is an extract from the Report of the Select Committee of the Legislative Council, which settled the details of Act X. of 1859; and this shows exactly how this 12-year clause got into its present position. This passage is as follo ws:—

"*Section* 6.—The laws in force speak of khoodkasht ryots as possessing rights of occupancy, and in some places the word 'khoodkasht' seems to be considered as synonymous with 'resident.'* '*Resident*' was therefore the word used in the original Bill. But it has been pointed out by the Western Board that residency is not always a condition of occupany; and it appears that, after much enquiry, it was prescribed by an order of the Government of the North-Western Provinces in 1856 as most consistent with the general practice and recognised rights, that a holding of the same land for 12 years should be considered to give a right of occupancy. We have followed this precedent, and altered the section accordingly."

* Regulation LI. of 1795, Section 10; Regulation VIII. of 1819, Section 11, Clause 3, and Section 18, Clause 5.

It would probably not be proper to use this evidence with the view of altering the ordinary meaning of the words of the Act; but it may fairly be used to support their plain declaratory form and meaning against a forced and less obvious construction. It is, then, absolutely certain that (whether or not they were strictly and exactly right in the definition adopted) it was the intention of the Legislature to declare and define existing rights,—not to create a new class of rights; and in that sense the plain words of the Legislature must be taken. The 12-year rule, thus declared and established, covered the great mass of resident ryots who had held so long or much longer, and relieved from the burden of proof ancient ryots whose proofs could not be carried back beyond a limited period. It amounted, in fact, to this. All holders of ryotee lands who can prove a 12-year holding shall be presumed to be ryots of the occupancy class, unless the contrary is proved by express written contract (under Section 7), If, in Bengal, some comparatively few pykasht ryots were wrongly included in the definition that is an accident, and not the rule. This creature of Act X., whom it is sought to make the normal occupancy-ryot, seems to be in practice a rare creature. He is more common in theory than in actual cases. Probably most of those to whom the old custom did not give such rights do not now assert them. At any rate, in all the cases which have given rise to this reference, the ryot claims much older rights, and the real contention is almost always with men of a much higher class. In Hills' case the ryot, we gather, claimed to have held from ancient times, and it was admitted that he had held for at least 30 years. In the present cases, no attempt is made to contradict or deny the ryot's assertion of ancient holding. There is generally little or no contest about the occupancy character of the holding. It would then, it seems to me, be most unjust to assume (till the contrary is proved) that the occupancy-ryot, whose right is tested by the definition declared by the law, is a mere creature of Act X., who had no right

whatever before that Act passed, and so to throw on him that burden of proof of which it was the very object and essence of the law to relieve him,—a burden which, if, according to a hard construction, it is necessary to prove his holding from before the Permanent Settlement it will now at this distance of time be almost impossible for him to bear. Such a construction would, in fact, reduce the great mass of the ancient ryots to the status of the most recent holders.

It seems to me that the presumption and onus are now quite the other way; and that any argument founded on the recency and character of a holding which comes within the definition prescribed by law, must be supported by proof that the tenure really is one of the recency and character on which the argument is based.

The right of occupancy is declared by the law—that is not now in question—but for other questions connected with the incidents of such tenure, it must, I think, be presumed that every man who comes within the definition is an occupancy or khoodkasht ryot according to the custom of the country, and that his tenure has the ordinary incidents of such a holding according to the ordinary custom,—all this should be presumed till, at least, the contrary is proved.

Now, it is quite certain that the ordinary and most important incident of an occupancy tenure is a right to hold at a customary rent according to the usage of the places adjacent. It might be a question whether the effect of a new definition, which might include in the class of occupancy-ryots some persons not before belonging to that class, would be to promote them to all the privileges and incidents of the ordinary occupancy tenure. I think that at any rate every occupant-ryot must be *primâ facie* presumed to hold under the ordinary customary law and subject to the ordinary incidents; that if it be proved that the tenure was hitherto subject to other incidents, then in such a case the new law may be construed strictly, and only those new rights will be acquired which the law expressly gives or the custom presumes on points uncontradicted by evidence; when other incidents, not absolutely inconsistent with the right of occupancy given by the law, are proved, then those incidents will continue attached to the occupancy tenure.

We deal then, first, with the ordinary occupancy-ryot whose rent is not shown to be otherwise than an ordinary customary rent. How is that rent to be enhanced on account of increase in the value of the produce?

It seems to me to be certain that the customary rent represents the proportions of the produce which was the ancient right of the ruling power; and that if that rent be, as it were, resolved into its original elements, it will, when expressed in money, increase with the increase in the value of the produce exactly in proportion to that increase. The old proportion of the produce, the right first of the Government and afterwards of the zemindars, was in Bengal commuted into pergunnah rates expressed in money. Those pergunnah rates were in course of time transmitted in a somewhat altered form, and became the modern "rates paid in the places adjacent." But still these modern customary rates of the present day are the direct descendants of the old rates expressed in the form of a proportion of the produce. So long as the grain rates were from time to time converted into money, they rose in proportion to the increase of value: and since they have been permanently commuted into money rates, no other rule of enhancement is anywhere to be found. The only other systematic mode of enhancing the customary rates known to history also follows the method of proportion, *viz.*, that by "abwabs," or cesses, added to the "assal," or original rates, in the shape of a percentage or proportion, as clearly shown by Sir John Shore in the extract and example quoted from him by Harington, vol. III, p. 435:—

"At present there are many abwabs or cesses collected distinct from the nirikh, and not included in it, although they are levied in certain proportions to it. The following abstract of a ryot's account will show the mode in which this is done:—

	Rs. As. Gs. Cs.	Rs. As. Gs. Cs.
Rent of bighas 7-12-7 of land		14 0 8 0
ABWABS OR CESSES.		
Chout at 3-16ths per rupee	2 10 0 0	
Poolbandee 1-24th of the jumma	0 9 7 2	
Nuzzerana 1-12	1 2 15 0	
Mangan 1-12th	1 2 15 0	
Foujdaree 1-16th	0 14 15 0	
Company's Nuzzerana one month's and a quarter's rent	1 7 0 0	
Batta one anna per rupee	0 14 0 0	
		8 12 2 0
TOTAL		22 12 10 2
Khelat at 1¼ anna per rupee of the above sum		2 2 1 2
TOTAL		24 14 12 0

History and equity seem to me both directly to point to the rule of proportion, that is, that as the value of produce increases the rent should increase in the same proportion.

As respects the other mode by which the whole increased value is added to the rent and given to the landlord (still dealing with the ordinary occupancy-ryot holding on a customary rent), it seems to me—

First.—That it is inequitable to give to one of two parties interested in the soil the whole of any profit arising from it; and *second*, that it is at variance with the old arrangement between the parties, and the old practice, and inconsistent with the nature of the customary rents.

Third.—This mode seems to me to necessitate the consideration of elements of calculation not contemplated by the law, and to become in practice impossible of application. In order to ascertain the comparative or proportional increase of value, it is not necessary to ascertain the actual gross produce of the land at either one period or the other, but only the relative value of the staple products at the two periods. Mere price currents, showing, *e.g.*, the market price of rice at the different periods, are sufficient to show that the value of the produce of rice-fields has doubled (increase of productive power not being alleged). But to ascertain the absolute increase of the value of the gross produce, we must begin by ascertaining not only the price current, but also the actual quantity produced. Nor is that enough. It is manifest that, with the general increase of prices, the cost of production will also ordinarily more or less increase (in fact, the food of men and cattle and many other things are directly affected by the same increase), and to give to the zemindar the whole increase in the gross value of the produce would be a great injustice. Hence every such calculation supposes that the cost of production at either period must also be calculated. This is introducing a new element not mentioned in the law, and it involves a much more difficult calculation, such as was attempted in Hills' case. I believe it to be beyond dispute that, in practice, it is wholly and absolutely impossible for the Courts to arrive at a safe and correct result, showing the true rent and actual net increase of value by this process. It may in some places be possible to ascertain market rates of rent; but to ascertain the true rent by the process indicated in Hills' case is, I believe, wholly impossible.

I would therefore reject this mode as being—

1.—Not fair and equitable.

2.—Contrary to custom and law.

3.—Practically impossible.

To return to the method of proportion. A subsidiary question has been a good deal argued, *viz.*, whether, before applying it, the cost of production should also be taken into consideration. It is said that the cost of production may not always exactly follow the value of produce; that it may sometimes increase in a greater or less proportion relatively to the increase in the price of produce, or may remain stationary, or decrease when prices increase, or *vice versâ*. The latter supposition is not probable in this country. As has been said, many of the items which enter into the cost of production are identical with those which make up the value of products or very closely follow them; and some of the objections to dealing with this element have already been noticed. It may, however, be admitted that, more or less, the increase in cost of production may somewhat vary from the ratio of increase of value of gross produce; and it might be the strictest theoretical equity to calculate first the net value of produce after deducting the cost of production, and then to apply the rule of proportion to this net value.

I think, however, that the law contemplates, as ground for increase of rent, the gross value of the produce, and not the net value. The cost of production is not mentioned, and no increase of rent could be sought on the ground that the cost of production has decreased. That would be one of the accidents the advantage of which is left to the ryot.

Then it is certain that, in the original division of the produce on which the customary rent is founded, no variation is allowed on account of variable cost of production. It is presumed that, in a rough and general way, the value of produce and cost of production sooner or later follow one another. In fact, originally, there was hardly any such distinction. No money calculation entered into the matter. The ruling power took its share of the produce: the ryot and his family and his cattle consumed their share, and paid out of it in grain the dues of the village carpenter and blacksmith and weaver. It is therefore only consistent in following out the old analogy to follow it out in the old way, not in a new way. However theoretically equitable, a calculation of the costs of production would in practice only introduce an element of confusion not contemplated by the law. As a decrease in the cost of production, the value of produce remaining stationary, would clearly, under the law as it stands, be the profit of the ryot, so if the rate of increase of some items of the cost of production somewhat lags behind, and is slower in attaining its maximum than the increase in market value of the produce, that also is an accident which the law and custom give in favour of the ryot. In the more improbable case in which the cost of production might increase in a greater ratio than the value of produce, that might be an accident against the ryot. But my own opinion is, that ordinarily

this can happen only in countries where corn is largely imported, and that is certainly not likely to be the case in Bengal and the valley of the Ganges. In this country a great labour market has always greatly raised the price of grain: witness much recent experience in many parts of India. And it may be observed, as a means of getting over any theoretical difficulty arising on that score, that there is a singular difference between Sections 17 and 18 of Act X., which can hardly be mere accident, *viz.*, that, while Section 17 strictly provides that there shall be no enhancement except on one of three specific grounds, Section 18, immediately following, merely declares certain grounds of abatement, but omits the words which would limit all abatement to those particular grounds. It may be that if, by an extreme accident, an excessive increase of cost of production, without corresponding increase in prices, rendered the ryot's rent, as adjusted by custom and proportion, permanently higher than the market value, he might claim a reduced pottah on general grounds of fairness and equity. That, however, is beyond the present question; and it may be generally observed that, in dealing with customary rights, we can hardly strictly apply those rules of Political Economy which assume competition principles to the exclusion of custom and moral force.

I think, then, that in the case of all occupancy-ryots holding on rents which may be presumed to be customary, or in regard to which no other established rule of enhancement can be shown, enhancement sought on the ground of increase in the value of produce should be decreed exactly in proportion as the current prices of the staple articles of produce yielded by the land have permanently increased. The last adjustment by mutual consent must (in the absence of any special stipulation) be considered to have been at that time the fair and equitable rent by which both parties are bound. Either party may go so far back if he chooses, but no farther. The party coming into Court must show the increase of price at the present period as compared to that period, or to a series of subsequent years. If subsequent years be taken, or the date of the last adjustment does not appear, the opposite party may carry his evidence as far back as he pleases, so that a last adjustment be not overstepped. The increase will be calculated on the average of a few years at the period farthest back (and consequently nearest to the last adjustment) so shown as compared to the average of recent years. The officer making the calculation must of course be satisfied that there is a real increase in the value of the produce likely to be durable, and that the rise in prices is not the temporary result of bad harvests, an occasional extraordinary demand, or any such irregular cause.

Of course, the whole of the above has reference to increase sought under Clause 2, Section 17 only. The old rule, that ryots holding for any reason (other than express and binding stipulation of the zemindar) at rates below the customary rates, can at any time be raised up to those rates, is distinctly re-enacted by Clause 1; and exceptionally low rates can always be adjusted to the rates payable by the same class of ryots in places adjacent, under that Clause, independent of increase on account of increased value of produce. But if the adjacent rates have already been increased on account of increased value of produce, a double increase on that ground of course cannot be had by taking advantage of the same element under both clauses.

There remains only the case where it may happen that the contract under which the ryot holds, though so indefinite in regard to the term of holding as not to defeat the claim to right of occupancy, still shows that the rent was *not* a customary rent, and supplies materials from which some rule of enhancement other than the customary rule can be found—*e. g.*, when the pottah is for rates above the customary rates, and shows that it was based on some other calculation, or stipulates for renewal at market rates. On the zemindar's proving such a case (and in such a case only), enhancement may be decreased on the basis supplied by the original contract, and not on the customary basis, provided only the case comes within the terms of Section 17 of Act X. as respects some ground of enhancement. Law rents on special stipulations would first be adjusted under Clause 1 by raising them to the full local rates.

The only difficulty as regards the practical working of the simple and direct rule of proportion would be the case in which the crops produced have been wholly changed; where, for instance, some new and valuable staple has been introduced. It may be said, you may compare rice with rice, or wheat with wheat. You may also compare two different staples, which, according to the old custom, were divided in the same proportion; but you cannot compare rice with sugarcane; they are, as it were, incommensurate quantities. This case has not yet been presented to us, and I understand that in Bengal there is not the same rotation and variety of crops which we have in other parts of the country. Rice land, I am told, usually remains rice land, till by artificial means the character of the land itself is changed. The crop is not changed without a change on the surface of the land, by which it is removed into another class. If that be done by the ryot, the increased value of produce resulting is not a ground of enhancement of rent. But it may be necessary to meet the case of new or improved staples. It will generally happen that the introduction on the old ground of new staples, rendering it more

valuable, will raise the value of the old staples in much the same proportion. For instance, the excessive rise in price and consequent extension of cotton cultivation in Western India has led to an equal rise in the price of grain. In such a case the increase of value caused by new staples may be measured by the increased price of the old staples. But if this cannot be done, it is certainly the case that rice and sugarcane (as an example) are incommensurate things. Staples of great value, which owe most of their value to the large expenditure of capital in their cultivation, cannot be compared to those which a light cultivation obtains easily from the land. That is known and recognized by all the Revenue systems of Native States, which are generally regulated in this respect by wonderfully correct principles of Political Economy. Not only does the State proportion of different crops vary according to the nature of the cultivation required, but in arid parts of the country irrigated crops of any particular grain pay a smaller proportion than unirrigated crops of the same grain, because a greater proportion of the former is due to labor and capital. And sugarcane, cotton, vegetables, and such valuable products always pay fixed money rates, so that the extra expenditure of capital is not taxed. When, then, new staples have been introduced and no sufficient measure can be derived from the increased value of old staples, in that case only it may be necessary so far to depart from the direct proportion of current prices, and equitably to estimate, as best may be, the actual increase in the annual value of the land, increasing the rent in the proportion of that increase. If such a case arises, the rule of proportion may, I think, in some shape still be applied.

To sum up, the question principally argued before us seems to be simply this: "Are the zemindars absolute owners of the soil, and the ryots persons without any other right than one recently conferred upon them, to protect them against capricious ejectment, namely, a right of occupancy at full market or competition rents; or have the ryots also certain rights in the soil by law, custom, and prescription?"

That question we are, without disagreement, disposed to answer by saying, "all occupancy-ryots are not necessarily of one class. While some have high customary rights, others may possibly be mere tenants-at-will, recently converted into occupancy-ryots." The substantial difference is only as respects the onus or ordinary presumption.

The majority of the Court seem to be of opinion that a ryot who has held for 12 years and upwards must be presumed to be a khoodkasht ryot, and entitled to the privileges of the "khoodkasht" of the laws till the contrary is shown; and that if it be shown that the ryot has come in at a date subsequent to the Permanent Settlement, still, if he came into the village as a khoodkasht or resident ryot, or has held more than 12 years without any express contract and at customary rates, he must be presumed to have acquired by consent, law, custom, and prescription the ordinary customary privileges in regard to the rate of rent. That custom traced to its origin gives us the rule of proportion.

We are all again agreed that if, in a possible case, a written contract inconsistent with the customary rates, and a holding under that contract, be proved, effect must be given to the contract, except so far as it is varied by the strictest interpretation of the provisions of Act X. of 1859.

I would return to the Division Bench the answer proposed by Mr. Justice Trevor.

Mr. Justice Sumbhoonath Pundit.—I agree with Mr. Justice Trevor, except with regard to certain remarks in his judgment concerning Sections 13 and 17 of Act X. of 1859. What is written below relates to those sections and to matters which were discussed during and arose in the trial of this case, which are not noticed in detail by Mr. Justice Trevor, and which, I think, are necessary to be recorded to support the decision adopted by me, as well as to answer the arguments on the opposite side.

I have purposely avoided to write anything concerning the points of the case in which I agree with the other Judges, and regarding which they have written elaborate and learned remarks.

Section 17 of Act X. of 1859 provides that the rents paid by ryots having rights of occupancy without fixed rates cannot be enhanced except on the three following grounds:—

1st.—That the rents paid by the ryots are below the rate paid by the same class of ryots for similar lands in the neighbourhood having similar advantages.

2nd.—That the value of the produce or the productive power of the lands has increased otherwise than by the agency or at the expense of the ryot.

3rd.—And that the lands held by the ryot are proved on measurement to exceed the quantity for which rent was previously paid.

An enhancement supposes an existing rate or amount of rent to be increased.

The last of the three grounds mentioned above, properly speaking, is not one for enhancement, but only for adjustment of rents. The second might include a rise in the value of the produce or the productive powers of the land at the expense of the landlord. The first ground

presupposes that the rents of the generality of the neighbouring ryots have been properly adjusted with reference to the surrounding causes, and have been brought up to the highest amount payable under the law.

In this part of the country the zemindars do not improve their estates by laying out any large amount of capital in draining or otherwise improving the lands. In several localities they, however, advance seed or money to their ryots, build and maintain some embankments, or dig and keep clear and in a working order certain water-courses, or prepare some wells. All these works and proceedings generally are such matters of necessity that without them it would be impossible for the ryots to make any profitable cultivation. When the law speaks of an increase in the value of the produce or the productive powers of the soil at the expense of the zemindars if it is included in Section 17, generally it must mean to refer to expenses like those mentioned above, and not of any greater magnitude.

Section 18 provides that a ryot having a right of occupancy can ask for an abatement of his rents on the ground of diminution by diluvion or otherwise, or decrease in the value of the produce or of the productive power of the land, or on the ground of the lands being, on measurement, found to be less than the quantity for which he was paying rents. Whether he can ask for an abatement also upon any other ground is not intended to be decided by this section. It is, however, clear that the list given above is almost exhaustive of all the reasonable grounds for abatement. Any decrease in the costs of production not being made a ground for enhancement, an increase in the same would not be a just ground for an abatement.

Section 13 provides that under-tenants or ryots who hold or cultivate without written engagements, or under written engagements not specifying the period of such engagements, or whose engagements have expired or have become cancelled in consequence of the sale for arrears of rent or revenue of the tenure of the estate in which the lands held or cultivated by them are situated and which have not been renewed, shall not be liable to pay rents of an enhanced rate, unless notice be issued before the commencement of the year for which the enhanced rates may be asked. Under the proviso recorded at the end of Section 32, a suit for such enhanced rates may be instituted after three months of the expiration of the year for which such rents are asked.

The demand, however, may also be made at any time within three years from the expiry of the year for which such rents are claimed. Under Section 14 the ryot may, immediately after the service of notice, contest the validity of this demand by a suit, without waiting for a claim at the enhanced rates being brought against him by the landlord.

Section 23, Clause 1, speaks of suits to obtain kubooleuts and pottahs, and to fix the rates at which the rents are to be paid. Section 76 enacts that when a ryot having a right of occupancy demands a pottah, and there is any difference regarding the terms, the Collector has to fix the rents and the term of the lease, which latter however, in estates permanently settled, is not to exceed 10 years.

The expiry of the term does not necessarily terminate the tenancy of the ryot. The term fixed is the period during which the rent is to be paid at the rate mentioned in the pottah. When from any ryot, having a right of occupancy without any fixed rates of rent, a kubooleut is asked by the landlord, and a decree is given for the execution of the same, the terms of the deed as fixed by the Court cannot, speaking technically, be operative beyond a year. In the case, however, of a pottah being asked by such a ryot, the Collector can fix for it a period extending beyond a year, and during this term the landlord has no right to enhance upon any ground whatsoever. Perhaps the ryot also cannot sue during the existence of this term for an abatement except in cases of diluvion. It may, however, be observed here that the ryot has always the liberty of relinquishing his lease by giving notice at the end of the year after which (*see* Section 19) he intends to give up his lease.

Section 5 provides that, in case of disputes, the rents previously paid by a ryot having a right of occupancy without any fixed rates of rents are to be considered fair and equitable, unless the contrary be shown "in a suit under the provisions of the Act."

It follows from this that, in a case for enhancement under the second head of the second ground mentioned in Section 17, the landlord and the Court must assume the rents previously paid to be fair and equitable, and that the landlord, when he wants to disturb them, must proceed under the first ground for enhancement.

The right to ask for a kubooleut mentioned in Section 23, against the tenants and ryots independent of any enhanced rates of rents, is necessarily confined to cases where there is no written engagement, or where, by operation of law or time, the former pottah has become cancelled, or, owing to a division of the estate, it has become necessary to ask for a kubooleut from the ryot who by his former engagements was bound to pay rents to other parties than the

person now entitled to demand the same. Those who merely succeed to the former landlord, either by inheritance or as purchasers or assignees, have no right to ask for a fresh kubooleut.

The kubooleut may also be asked in cases of a permanent tenure, when it may have been originally given on condition of settling the amount of rents with reference to a measurement to be made at some future date, or with regard to the quantities to be cultivated within a certain period. In these cases the rates of rents are settled before, and the necessity for demanding kubooleuts through Courts arises afterwards from disputes regarding the quantity by measurement, or concerning the quality or the condition of the lands. In these cases, generally, a mere amulnamah is given at first, or some deed executed providing for the future exchange of the pottah and kubooleuts after a certain period. Even by the Sale Law of 1859, ryots having a right of occupancy (Section 37 of Act XI. of 1859) are not liable to pay any identified and unlimited amount that may be asked. It is therefore evident that in all cases purely for kubooleuts, either the rates are fixed, or are simply required to be fixed by reference to some standard, *viz.*, the nirikh of the pergunnah, or the prevailing rates of the neighbourhood. No landlord can be allowed to ignore the provisions of Section 17, by simply asking for a kubooleut when his real intent is to ask an enhanced rate of rents. The landlord may, both when there was and when there was not a kubooleut before, ask for an enhanced rate under Section 17, and at the same time ask also for a kubooleut at the enhanced rate sued for by him, but that will not give him any right to ask for a general adjustment even of the old rents, and to pass over the restrictions imposed by Sections 17 and 13.

When, however, a kubooleut may be asked (irrespective of any right to enhance), if the case requires a settlement of the rates, they are to be fixed according to the prevailing rates of similar lands in the neighbourhood; and where the rates are already fixed, the amount of rent to be inserted in the kubooleut is to be summed up at that rate upon the quantity of the land which, after investigation, may be found to exist, or found to be liable to pay rents. It is therefore manifest that in ordinary cases for kubooleuts, and accordingly also in suits for pottahs, no question of enhancement or abatement can be allowed to be raised. If, however, when the value of the produce of the lands of his ryot may have risen, the landlord sues for a kubooleut fixing and determining the rates of rent to be paid by the tenant, he can ask only for a kubooleut, and the rents to be fixed must necessarily include the share of the enhanced value. If the rents in the neighbourhood have already adjusted themselves with reference to the altered state of things, the rents to be paid will be fixed with reference to those prevailing rates. If the rents have not so adjusted themselves, the rates prevailing before the rise in the value of the produce is first to be found out, then the share of the enhanced value is to be added to it, and the total of both will represent the proper rent.

If it be held that objection against the fairness of the old rates can be raised in all cases for kubooleuts and pottahs, the double process mentioned above must be adopted in these suits also.

The object of the law, however, appears to keep all cases under one right quite separate from others involving other rights.

In the present case, owing to a rise in the value of the produce upon the rents previously paid by the tenant, an enhancement is asked. It is therefore a case for enhancement, and not simply for a kubooleut, though a kubooleut is demanded by the plaint. It is true that a case for enhancement must be for the rents of *past* years, and in this case a kubooleut is asked for three years, and these are partly in future, still the fact of the insertion of this prayer cannot be allowed to alter the real merits of the claim. As the tenant had not given a kubooleut before, if the landlord had said "that the ryot has not given me a kubooleut, that I have offered him a pottah, that I want a kubooleut accordingly," and no mention had, on the ground of a rise in the value of the produce, been made of any right to ask for an enhanced rate (equal to that paid by the generality of ryots for similar lands before the rise in the value) it may have been a case for a kubooleut fixing the rents. The prayer to ask a kubooleut for three years is redundant, as no order fixing the rates for three years can be granted by the Court at the suit of the landlord. For a suit like this, where virtually an additional rent is asked upon the second ground mentioned in Section 17, issue of notice under Section 13 before the beginning of the year for which the enhanced rent is asked, is essentially necessary; but as no objection regarding the non-service of such a notice is taken by the tenant, it may be supposed that one was issued as required by the law. In all such cases the adjustment for one year is practically an adjustment for an indefinite period, *viz.*, up to the time that any cause does not arise for a further enhancement or for abatement. Most of the ryots throughout Bengal hold without pottahs and have seldom given kubooleuts, yet the rents payable by them are known to the parties concerned, and are evident from papers produced when disputes arise.

In the present case it is admitted that the value of the produce has risen without the agency of either the landlord or of the tenant, merely by a general rise in the value of the produce, owing either to an increase in the demand or a general rise in the price by a greater influx of gold in the country.

In order to find out what is the proper rent according to the rules laid down by political economists we must find out, first, the average yield of a stated quantity, say a beegah. To find this, we have to ascertain the yield of the different crops from several separate and similar parcels of the land, at least in the year for which the enhanced rate is demanded, as well as for one or several years preceding that rise. We have then to find out the average value both of the increased and of the former products. This must be done by reference to sales made by more than one person of their several products during the two periods. We have afterwards, by a most tedious and complicate calculation, involving the consideration of numerous items, to fix the average costs of these products. In order to calculate this average of costs, we must not only find the value of several things, but also, by some arbitrary mode of calculation, the exact amount of those items that are necessary to produce the average of any particular produce per beegah. The calculation of all these averages must therefore, for the sake of this average of costs, be made by taking into consideration the amount of lands likely to be cultivated by some limited standard, as a couple of bullocks and a plough. Now each ryot does not hold an equal quantity, or exactly sufficient for one or more ploughs. The necessary things must be purchased, and the bullocks fed even when the lands held by a ryot may not exactly be sufficient for one or more pairs of bullocks. The labors of the husbandman must be entirely devoted to the looking after his field, even if it be composed of beegahs less in number than the quatity fixed for one plough. It is quite clear that, owing to the difference in the quantities of land held by different ryots, the calculation of the general average by those rules and such standards cannot be expected to be fair and equitable to all the ryots. It may be favourable to some, and must be the contrary to others. The average quantity of the seeds, of manure, or even of the labor per beegah, may not be open to the same objection. The exact quantity of these may be fairly discovered by a calculation on the principle of averages; but the calculation of the average of many other items must be wrong from the very nature of those items; and if those averages are defectively fixed, the result will tell against the correctness of the average of the increase in the value of the produce found by this process.

It is only after these perplexing, tedious, and almost impracticable calculations that an average of the increase per beegah can be found either in the price of the produce or the productive powers of the land. In such a calculation correctness is out of all question.

It was for this cause of impracticability of arriving in this country at any correct result, that Government, by Section 2, Regulation XIX. of 1833, modified that portion of Regulation VII. of 1822 which provided rules for assessment upon this principle of the calculation of averages. The cost of production being further under the control of the ryot, he cannot, when he is entitled to a deduction of them in any account fixing his rent, be expected to exercise any attempt to reduce these expenses by any device or discovery. He knows he will get these expenses deducted, and so does not care what they are in amount. Further, knowing that he is not to participate in any part of the increased profits, he, as a general rule, may rather be tempted to spend more than the sum he would have spent, if, induced by hope of participation in the profits, he might be led to adopt many measures of economy.

The calculation according to the rules of Political Economy may be adopted when the rents are not limited by any custom, and is adapted to a country where people, for want of opportunities for laying out their capital, look to the cultivation of land as means of realizing something for maintaining themselves and their families and for increasing their wealth. Agriculture here is no part of any commercial investment. When there is a rise in the value of the produce of lands, the same causes which have brought about this state of things must have raised the value of many other things likely to be required by the cultivator of the lands. Besides, the very produce of the fields is as much necessary to the ryot as to other people.

If the value of money has thus virtually diminished, it is quite apparent that if no more than the former amount of profits is given to the ryot, when an enhancement is to be made on account of the increased value of the produce, this amount will not now represent the exact value of the money originally reserved to the tenant. It may be said that one-half of a smaller sum may be a fair share of a tenant in one state of things, but the same portion out of a much larger amount might in another state of things not necessarily be so; but in answer to this it is to be kept in mind that when civilization and wealth increase, and are more diffused, many things which were luxuries before are sure to become necessaries even to the ryot and his family; and under such a state of things, he must now have a larger amount than he had

before, unless it is intended that he is to be reduced to a state of comparatively greater wretchedness and destitution than he had the misfortune to be in before.

Generally speaking, the rise in the value of the produce is not the effect of expenses incurred by the landlords. In cases, however, of the rise of the productive powers of the soil, such expenses may have materially contributed to bring about the increased productive powers.

In Bengal an advance by a landlord to improve his estate is a thing unfortunately a mere contingency written in the books of laws, but not yet practically realized. Even in cases where the rise in the productive powers, or the rise in the value of the produce may have been the effect of some expense by the landlord, the law does not appear to enact that the whole of the increase must be given to the landlord. It may fairly be supposed that in such cases the landlord, besides the old rent, is justly entitled to the market rate of interest upon the capital laid out by him, and if anything still remains of the increased value, it is left to the Courts of Justice to determine what are the fair and equitable proportions in which this balance is to be divided between the tenant and the landlord. If in such cases the entire increased amount of profit is not awarded by law to the landlord, it must be clear that it was the intention of the law-makers to leave to the said landlord the entire increase, where the rise in the value is as much unconnected with him as with the tenant. The ryot as a party connected with the land has some right, irrespective of his former position, to receive some portion of this increase as the holder of the land, and the party who raises and sells the quantity of the produce which fetches the present higher value. Fair and equitable rates required to be fixed by a Court of Justice, and especially with reference to the known and established rights of tenants in the country, must mean something different from the highest rents which can be procured by putting up the farming of the lands to competition. The simplicity of the rule of proportion, its pliability to be adapted in many other cases than the one now before us, and the fact of its not being opposed to the principles which appear to have generally guided the fixing of rents throughout the country, have induced me to adopt it.

It cannot be said that the law has said in so many words that this rule of proportion should be observed. In adopting the rule of proportion, we are not obliged to make any difficult enquiries. The old rent is always shown, and the particulars of the increase itself must be supplied by the landlord to start his case. He proves that a maund of a certain produce of the land fetched one rupee before, but that since so many years, the price increasing, it now fetches from such a time Rs. 2 per maund. The value of agricultural produce is a thing almost within the personal knowledge of the generality of the villagers, and there are various satisfactory records showing what it was for several years past. We have but to find out the average produce of the present time. The quantity of the produce in all such cases of enhancement upon the ground of the increase in value is assumed, on both sides, to have been the same before as it is at present.

The landlord is not likely to be a loser when he gets his rents in the same proportion that he got them before, and the ryot cannot in any way be said to encroach upon the rights of his zemindar, when he is allowed to retain (for his costs and his share of the profits) only the share that he received before. It is quite within the power of the tenant to give satisfactory evidence of the quantity produced. The value of this quantity according to the old price being easily calculated, we discover by calculation the proportion that the former rent bore to the amount of that value, and by subtracting this value from the amount found by calculation to represent the present value, we at once find the amount of the increase in the value. Then we have to give to the landlord out of the present value the same proportion which his former rent bore to the former value. It was within the power of the landlord to have raised the former rents before the increase, if the former rates were from any cause lower than those paid by others of the same class in the vicinity for similar lands. When further increase of value takes place from time to time, the adjustment on the rule of proportion will not become the less fair and equitable, because in amount a larger sum is left to the ryot. His gains relatively and proportionately with those of his landlord have not risen, though, as compared with his former share, the amount of the present share may appear to be larger. This rule of proportion is not likely, on the ground of the calculation being made on the gross, and not on the net, value of the produce, to be injurious to the landlord. It is not likely to be so to the tenant, except when the rise in the costs of production may *exceed* the proportionate rise in the value of the produce. This is not, however, likely to happen at all. It is not only an extreme and improbable, but almost an impossible, case. If it can be supposed that a rise in the value of the produce, much beneath the proportion of the rise in the costs of production, or a rise in the first without any rise in the other, are cases any way possible, leave may be granted in any of these cases to the ryot or the landlord, as the case may be, to make special application to the effect that the proportion of the

profits for him of the increased valuation should be divided with reference to the value of the net, and not the gross produce.

Mr. Justice Seton-Karr.—After ample time for consideration, I concur in the answer which it is proposed to send to the Division Court. That answer is contained in the elaborate and clear judgment of Mr. Justice Trevor, which seems to me conclusively to establish the following points, and that, by a reference to the whole course of legislation on this important subject, from 1793 downwards, as well as to facts disclosed by Indian History.

1. Neither by Hindu, by Mahomedan, or by Regulation Law, was any absolute right of property in land vested in the zemindar to the exclusion of all other rights; nor was any absolute estate, as we understand the same in England, created in favor of that class of persons. The ryot has by custom, as well as by law, what we may term a "beneficial interest in the soil."

2. The Decennial Settlement, while enhancing the status and fixing the rights of the zemindars, did not intend to alter, and did not alter, the Common Law of the country, with regard to ryotee tenures; khoodkasht ryots, whose tenures commenced at, or subsequently to, the Decennial Settlement, were still entitled to hold such tenures either at the pergunnah rates, or, what is the same thing, at rates payable for lands of a similar description in the neighbourhood.

3. Pergunnah or local rates are perfectly capable of ascertainment.

4. Such ryotee tenures and rights being in existence all over the country, though not very well defined, Act X. of 1859 fixed twelve years to be the limit after which the right of occupancy of an ordinary resident, permanent, or khoodkasht ryot, could not be questioned, and conferred the same right of occupancy on other ryots, who formerly and without that enactment might, perhaps, not have been entitled to the same by the common usage and custom of the country.

These points appear to me to have been set out in the judgment I allude to, at such length and to be supported by such arguments, reasons, and authorities, that it is not necessary for me to attempt to go over the same ground again. The same views are further established by the judgment which Mr. Justice Campbell has written at considerable length and with great force. I have therefore only to add some remarks on the three several principles according to which it has been suggested for the one side or the other, that rent ought to be enhanced by zemindars, and that Courts of law ought to decree enhancement.

The first is the principle of competition. At the time when the rent question was argued before the whole Court, at great length and with consummate ability on both sides, one of the learned Counsels, as I understood him, expressly abandoned the theory of competition, although Mr. Doyne did contend for the adoption and soundness of this principle. But I do not understand that any one of my learned colleagues looks with favor on this proposal either as warranted by the law and custom of the country, or as even calculated to effect a settlement of the rent difficulties. On the legal aspect of the principle, it must be conceded that it is one applicable to English landlords and English tenants, and that it has been with them adopted, as the feudal system passed away, from the consideration that an English land-owner has now a complete and absolute right in his land, and can deal with the same as he would deal with any other article or chattel over which he has entire and uncontrolled dominion. Still, not to say that rents by custom, such as quit-rents and fee-farms, do exist in some parts of Great Britain, and that even there competition, though general, is not absolutely universal, this said principle of competition is, I do not hesitate to say, hitherto, practically, and as a general rule, unknown in India. We find no trace of it in the works of Hindu or Mahomedan writers. It was never expressly sanctioned, contemplated, or even implied by any section of all the Regulations of Lord Cornwallis. It is abhorrent to the temperament, social habits, and attachment to the soil which distinguish the agriculturists of India to an extent unequalled by the agriculturists of any European Kingdom. If one or two instances can now be cited where zemindars, in the neighbourhood of Calcutta or in some of the Metropolitan districts, have put up lands which have come into their own actual possession by death or desertion to competition, such partial exceptions will only be a more convincing proof that ordinary rents all over the country were and are still regulated, not by competition, but by some other principle. Indeed, if the word competition deserves to be applied at all to any dealings in respect of land, the term must mean, in India, competition by zemindars for ryots, and not by ryots for lands. I can perfectly understand that a legislator might think a system under which England has attained such an eminent degree of agricultural prosperity and advancement, to be a system which will benefit all countries and peoples and that he might wish to introduce the same into the provinces of India. I say that I can perfectly understand the feeling which would prompt such a course of policy, though I might doubt

the expediency of the measure when I considered the opposite customs, in respect to the cultivation of lands and the collection of rents, which had long been recognised and acted on: the traditions which are consecrated by ages; and the vast and almost irreconcileable differences of character and feeling between the European and the Asiatic races as dwellers in rural villages, and as tillers of the soil. But, under the peculiar circumstances of this country, we have as Judges to carry out the law with regard, not to what we might think the best possible scheme for improving the various processes to agriculture, and for enabling men, first to amass, and then to distribute wealth, but with regard to the wording and spirit of the law itself, and also with regard to the customs and habits of the people, where the Statute law is silent; and we are bound to take care that we do not sanction or introduce strange principles in the settlement of what is admitted to be a vexed and difficult question, left designedly for the Courts of Law to settle as they best may. Finding therefore no trace of rents by competition either in the laws of 1793, or in the Act for the settlement of all questions between landholders and ryots, known as Act X. of 1859, or in those customs and peculiarities which make up for the Common Law of the country, and without which all statute laws are mere pieces of parchment, bearing indeed the stamp of the Legislature, but without vitality or effect, I am clearly of opinion, and so, I understand, are all my learned colleagues without exception, that whatever rule may be taken to guide Law Courts in future in the enhancement of rents, that rule must and cannot be competition.

Next, we come to the second principle proposed or suggested for our acceptance, as well as for the guidance of the Subordinate Courts. And this I understand to be as follows:—

In cases where rent is sought to be enhanced by reason of an increase in the value of the produce owing to the general rise of prices and independent of the agency either of zemindar or ryot, the old rent is to be taken as the basis, but the whole of the profit, less the increase in the cost of production, is to be taken by or decreed to the zemindar.

I have very fully considered this proposal, but must own that I am unable to find any one sound principle by which it could be supported, or any countenance for it either in the previous history of the rent difficulty, or in the wording of Act X. of 1859, or lastly in the intention of the Legislature which enacted that law. In truth, it seems to be even less capable of support than the theory of rents by competition. Competition if the laws were not pointedly opposed to that view of the subject, and if we had no clue to the policy of the Hindu, the Mahomedan, or the British Government in former days, might be plausibly and fairly supported by argument to the effect that this principle was the best when the laws were silent on the subject: that accumulation of capital was admittedly productive of great advantage to all countries: that there is no improvement to be looked for in agriculture from petty agriculturists, or mere cultivators, or unless wealth and means be massed in the hands of one individual: that only individuals possessed of such means and vested also with the exclusive dominion over the soil, and with power to eject ryots and cancel leases, can benefit the general population: and that a system which has worked such wonders in Great Britain must imperatively produce the same effect in India, or wherever it is fairly and fully tried. But the theory of the old rent as the basis (for it is not denied that there must be some existing basis on which to decree an enhancement) *plus* the increased value of the produce as the superstructure, cannot be supported by any such reasoning. If we still keep the old rent and add to it, we are dealing with what was, notoriously, fixed by the ancient custom of the county—that is, with cases in which landlord and tenant came to an understanding that they were to share in the profits of the soil without any thought of competition or rack-rent, and under an implied agreement and custom that if the ryot would take the land for so much, or would continue to live on and cultivate his father's holding, he should not be ejected so long as he paid his rent. We thus commence with a customary rent, and it seems to me therefore that enhancement ought to be decreed on somewhat the same principles as those by which the rent was originally fixed, *viz.*, by custom, unless the law has laid down some other principle as our guide. Now, on what principle, derived either from the Statute Law, or the Common Law, is the whole of the increase, deducting the cost of production, to be handed over to the zemindar? It cannot be on the presumption that the ryot originally received from the land what was just sufficient to repay him for his toil, to keep alive his cattle, and to allow him seed sufficient for the next year's harvest. This, we have seen, was not the principle on which rents were fixed either before or after the perpetual Settlement between the zemindar and the ryots. Neither can it be on the special proviso that the zemindar has done anything to improve the land, for the law applicable to the very case which we are considering expressly states that we are to provide for suits in which the increase is not owing to the agency either of the zemindar or of the ryot. Neither, again, can the proposed rule rest on any general argument drawn from the part which the zemindar takes in directing and aiding the agricultural operations of the cultivator.

The zemindar, it is perfectly notorious, takes no part in controlling or assisting the various processes of agriculture, for I do not consider the advance of Tuccavee for seed, made occasionally in frontier or jungly districts, as anything but partial exceptions not to be taken into account. He bears none of the risk. He supplies none of the capital. He makes no contribution to the ryot's stock, and he is never anywhere charged with the erection or the repairs of the ryots' houses, which do not belong to, and are never claimed by him, but which are invariably removed by the ryot when he changes his residence to some other village. Nothing, then, which can be discovered in the familiar and social relations between the zemindar and the ryot would seem to authorize us to say that, when the value of produce increases by the sheer growth of the country in prosperity, by the introduction and extension of Railways, by the rise in prices, by the general security of property, and by the gradual expansion of civilisation, the ryot is to get nothing, and the zemindar is to take everything. That a reasonable share of the increase is to fall to the zemindar on account of his increased expenses, and his unquestioned position and rights is admitted, so as to make the division fair and equitable; but it must be so to both parties. And this requisition will be hardly satisfied by deducting in the ryot's favor the mere increase of the cost of production. In many cases this may be much less than the increase in the value of the produce. And in all cases it will not amount to a recognition of the rights and position of the ryot.

Can we, then, find any grounds for such a rule in the actual wording or in the presumed intent of the Law? Surely, as far as mere words are concerned, we cannot. Had the Statute been intended thus to solve all our difficulties, nothing would have been more simple than to add a section to that effect. Instead of any such plain direction, we have the words "fair and equitable rates." But what of fairness or of equity, it may be asked, can there be discerned in a system which would take away all the advantages of an increase, when there is an increase, from one person who bears the labor of cultivation, the risk of the seasons, and the changes of the market, and would make over the same to another person who has no such burden and no such changes to bear? It may be a source of regret that the Law did not lay down some more precise rule or formula than the words "fair and equitable rates," or even that the Courts of Justice are at all made the vehicle of expounding the law in the matter; but as we are bound to consider and decide the point, I do not see how we can give everything to the zemindar, if we pay due attention to the ordinary meaning and import of language.

So much, then, for the language of the law. Then can we, admitting the want of precision in the language of the section, support the above principle on what we may conceive to have been the intention of the Legislature? Now, the intent and scope of Act X. of 1859 was much canvassed before and at the time of its passing. The Legislature avowedly came forward to fulfil the pledges of the Legislature of 1793, to repair its own unfortunate omissions, to supply what, owing to the neglect and apathy of the zemindars, had not been conferred on the ryot, and to place the whole of the relations between the two parties on a more satisfactory and equitable footing,—on a footing which should raise and elevate the ryot, while it in no way impaired those substantial rights which Lord Cornwallis had guaranteed to, or that conferred on, the native gentry of Bengal. Some of the men who passed that well-known Statute were men of intimate knowledge of the Revenue Laws, and of the habits of the people, and all were men distinguished by philanthropy and by active sympathies for the general well-being of the people. Did they, then, deliberately sit down to enact a law which, on one of the most constant and fertile sources of dispute and disagreement, laid it down that the ryot, for whose interest the law was passed, was to derive no benefit from the general good government and increased prosperity of the country, and that the zemindar, to whose neglect the law was in part owing, should derive all the benefit? I cannot gather from the debates that such was their intention, nor can I think any such ruling as that proposed for our acceptance would have received their sanction, or would have been consistent with their notions of what is "fair and equitable." We must constantly bear in mind that we are now sitting to carry out their intentions, and to apply, practically, in the contests between both parties, a rule which is to have equity and fairness to both for its base. Now, if the rent of the zemindar rises, without any effort on his part, in the proportion and scale on which it was originally fixed by the custom of the country and the consent of both parties, I do not think that it can be said that it does not rise in fairness and equity as far as he is concerned.

It follows, then, that I can discover nothing to support this second principle of enhancing rents, either in the consistency and plausibility of the theory itself, or in the Common Law of the country, or in the relations in which the zemindar stands to the agriculturist, or in the positive language and wording of the enactment, or in the supposed intentions by which the Members of the Legislature were actuated at the time. I must therefore reject the same as

not implied or recognised by the customs of the country, and as not warranted by the laws of the State.

In fact, this principle can be adopted only on the theory that no ryots, no ordinary resident cultivators, none, in fact, except khoodkasht kudeemee ryots, or ryots who can prove their existence as far back as the Decennial Settlement, have any rights of occupancy, or had any, until Act X. conferred the same on them by its celebrated Section 6. But the lengthy arguments in the case, and Mr. Justice Trevor's judgment, as well as Mr. Campbell's, and those of my colleagues which I have for the first time heard to-day, have clearly shown and have satisfied me that such is not the case, and indeed the theory with which I am dealing can only be supported by holding that the ordinary khoodkasht ryot who came into existence after 1793, in the spread of agriculture which marked the British Rule, is a mere tiller of the ground, who has no permanent connection with or beneficial interest in the soil: that evictions and ejectments have been, not only occasionally avowed in legislative theory, but have been largely resorted to in practice: that between 1793 and 1859 the whole Common Law of the country has been obliterated, and the feelings and customs of the population from the highest to the lowest have been completely revolutionized: and that the right of occupancy given by Section 6 allows no ryot, except the class of kudeemee khoodkasht, anything but the preferential right to squat, and to accept, if not a mere rack-rent, at least a rent which practically excludes him from all participation in the surrounding prosperity of the country, and reduces him to a dead and uniform level of risk and hard work, for the pure benefit of the zemindar, without any prospect of amelioration or increase of his own.

Not to go over the same ground of the Regulations and Acts unnecessarily, it may be stated with confidence that the reverse of all the above considerations is the case. Khoodkasht or resident ryots from father to son were always considered to have a right to remain on the land so long as they paid their rent. Customary rates and pergunnah rates recur again and again in our legislation. The zemindar with all his powers and rights, large as they no doubt are, is not an absolute landholder. The ryot has an interest in the land much beyond that of a mere day-laborer or of a person entitled to the wages and the enhanced cost of production. The Regulations and Acts extending over a period of years universally appeal to precedent, and nowhere actually annul or obliterate the solemn pledges of 1793.

Possibly, the Legislature, in seeking to repair neglect and omission, may have extended the privileges of occupancy at fair and equitable rates, to classes who otherwise would not have obtained it had things been left to themselves. Pykasht tenants, and even mere squatters, may now, after 12 years, unless the zemindar be vigilant, claim rights of occupancy, which the Courts, interpreting Act X. of 1859, may be compelled to uphold in their favor. But we are not dealing with such a case in this instance, nor have the generality of the cases that have come before the Court been of this kind. In nearly all cases rights of 20 and 30 years have been pleaded. In any view we are to administer and not to alter the law, and we cannot take into our consideration any particulars in which legislation perhaps went beyond that which popular custom and general practice would have warranted.

Finding, then, the second theory to require for its support a state of things other than exists and other than the Legislature has all along recognized, I come to the last rule—the rule of proportion.

No *via quarta* is proposed, or even hinted at, for our acceptance. This rule of proportion, it seems to me, will combine many of the requisites for which we ought judicially to look, in laying down general principles, on which zemindars can make, and Courts can enforce claims. It will proceed from the basis of ancient, recognized, and universal custom, and it will adapt that ancient custom to a new, a higher, and an improved state of things. It will be in strict conformity to what I understand to be the intention of the Legislature, and to what I think is a just interpretation of the words of Act X. It will depend on evidence, which, in most cases, will be ascertainable without extraordinary difficulty, *viz.*, evidence as to what is the present price of various kinds of produce compared with the price of the same articles some ten, or twenty, or thirty years ago. I believe that materials do exist for this enquiry, and that there are men in every Haut, Gunge, or Bazar in the country, who will supply such information. By eliminating all the cost of production, one additional source of confusion and intricacy will be removed, and all minute and almost impracticable enquiries into wages, stock, profits, and the like will be saved. Then, as regards the zemindars, it seems to me that such a plan will be equally "fair and equitable" to him. Without an additional anna of expenditure, without any increase of risk, or any new share of contingencies, he will be able to raise his rents, not merely to the level of local or pergunnah rates, but generally all over his zemindary, in proportion to his own naturally increasing expenses, and to the more substantial wealth and prosperity of the ryots of his estate. He will share, like others, in

the advantages, as well as in the disadvantages, of a general rise of prices. There are no doubt, cases in which it may be difficult to ascertain the old rates at which rents were fixed; and there may be others to which the proposed rule will not apply at all. In regard to the latter, Mr. Justice Trevor's judgment leaves the point open; and in regard to the former, all we can say is that there is no rule that the wit of man can devise under the present state of the law, which may not be difficult of application on some occasions, or may not work hardship or apparent injustice on others. The worst that can be adduced against the proposed rule is that it may be unequal, difficult of application, or uncertain in effect. But what is certain, and the only thing that is certain at present, is, that the rule in the case of Ishur Ghose has not only not furnished other zemindars and the subordinate Courts with an useful and available precedent, but that after all the time, the toil, and the great learning that has been expended on that case, we are not told that it has even settled the question finally between the actual parties to the suit.

After this, I think we can have little hesitation in adopting the rule of proportion as our guide. There is, in fact, no other resources left. Other modes of adjustment have been successively cut away from under our feet, by a preponderance of argument, or by the sure test of experience. I admit that the Courts of this country are placed in this matter in a position which, it is not too much to say, resembles that of no other Courts in the world. If the principle of competition be anywhere fully established, the rents of lands are settled on the well-known maxims of Political Economy, demand and supply, and Law Courts have very little, if anything, to do with the decision of such questions. If the Legislature had laid down a distinct and detailed principle for regulating enhancement, then Courts would only have to apply that principle, as they would any other. But with us, competition is a mere theory, and the law has failed to lay down a principle, except in vague and general language. We must remember, however, that zemindars have been accustomed to bring their cases of enhancement and of rents into our Courts from the earliest period of our rule, and that this system, which forces them into Courts, and which thus contradicts all assumption of absolute and unqualified rights on their part, is no strange or novel system to them.

We must, then, do the best in our power, and by a resort to past custom, as well as by a consideration of the present circumstances of the time and country, and of the intent and language of the law, we must endeavour to discover some rule which shall not be too cumbrous for the machinery at our disposal to work, which shall prove itself to be of general but not perhaps universal adaptation, which shall carry out the intentions of the Legislature, which shall be neither too much in advance nor too much behind the feelings of the age, and which shall be fair to the ryot, while it is not inequitable to the zemindar.

The rule of proportion, as far as I can judge at present, seems to me to combine all these requisites; and, in any view of the case, to come closer to the mark and to interpret the enactment better, than any other rule which has either been discussed in theory, or been tried in practice.

I would therefore transmit to the Division Court, and as a consequence to all the subordinate Courts, the answers proposed by Mr. Justice Trevor, with which answer I hereby intimate my entire concurrence, so that the various classes of Subordinate Judges may know in what particular decision they are to find the law of the majority of the Court. In support of that judgment, and with regard to the principles laid before us, I have thought it expedient separately to record my own reasons. I may add, after this consideration of the case judicially, that, without any extravagant expectations that such a ruling will dispose of all the difficulties as to rents all over the Lower Provinces, I entertain a hope that it will go some way to decide matters, that it will be capable of adaptation to the general circumstances of the country, that it will tend to bring the interests of both parties closer together, and that it will be welcomed as a relief by the ryots, and perhaps even as a boon by some of the zemindars.

Mr. Justice Kemp.—As considerable difference of opinion exists as to the principle upon which suits for enhancement of rent brought by landlord against a ryot having a right of occupancy, on the ground that the value of the produce has increased otherwise than by the agency or at the expense of the ryot, are to be determined, and as there appear to be conflicting decisions upon the subject, the question has been referred for the decision of a Bench consisting of all the Judges of this Court.

A preliminary question was raised and argued with reference to the wording of section 6, Act X. of 1859, whether the section is to be construed retrospectively or prospectively.

The section runs thus:—"Every ryot who has cultivated or held land for a period of 12 years, has a right of occupancy in the land so cultivated or held by him, whether it be held under a pottah or not, so long as he pays the rent payable on account of the same, but this rule does not apply to khamar, neejjote, or seer land belonging to the proprietor of the estate or

tenure, and let by him on lease for a term or year by year, nor (as respects the actual cultivator) to lands sub-let for a term or year by year by a ryot having a right of occupancy, the holding of the father or other person from whom a ryot inherits, shall be deemed to be the holding of the ryot within the meaning of this section."

On this point I give my opinion with much diffidence. I would observe that, though it is generally true that a Statute shall not be so construed as to operate retrospectively, still if the words are plain and manifest, and can have no meaning unless such a construction be adopted, the Court is bound to give effect to them notwithstanding any particular hardship, inconvenience, or detriment which may be thereby occasioned. It appears to me that the words used by the Legislature in the said section will admit of no other reasonable interpretation than that the Legislature intended them to be construed retrospectively.

As to the principle upon which suits for enhancement of rent against a ryot with a right of occupancy are to be determined, I am of opinion that the jumma hitherto paid by the tenant must be presumed to be fair and equitable, and that it cannot be enhanced unless the landlord, upon whom the onus lies, can prove that, under some one of the grounds laid down in Section 17 of Act X. of 1859, the jumma is liable to enhancement.

Much has been said in the course of this protracted argument on the subject of the status of the ryot prior to the enactment of Act X. of 1859. It has been contended by the learned Counsel for the zemindars that, previous to the aforesaid enactment, the only ryots who had any rights of occupancy at all were the kudeemee khoodkasht ryots, or their descendants; and that, with the exception of tenants of that class, all other tenants whose tenures were either created at some time subsequent to the Perpetual Settlement, as well as those who, to use the words of the learned Counsel, Mr. Doyne, are the mere creatures of Act X, are mere tenants-at-will, liable to ejectment at the caprice of the zemindar, unless they pay the highest rate of rent which can be obtained by competition. On the other hand, it was argued by the pleader for the ryots, Baboo Dwarkanauth Mitter, who conducted their case with very great ability, that both previous to and subsequent to the Perpetual Settlement, indeed up to the passing of Act X., no ryot of any description or class could be ejected as long as he paid his rent according to the pergunnah rates, or, in the absence of such rates, according to customary and prevailing rates.

It appears to me to be unnecessary to record an opinion at any length upon the vexed question of the rights and status of the ryot at the time of the Perpetual Settlement and subsequent thereto up to the passing of Act X. of 1859, inasmuch as that enactment has definitely declared what the rights of the ryots are. I shall content myself with briefly stating that, in my opinion, prior to the Perpetual Settlement, the zemindars possessed no absolute or proprietary title in the soil, that such title was for the first time, and gratuitously, vested in them by the British Government. The name of zemindar was wholly unknown to the Hindoos, and was borrowed, together with the office, from Mahomedan institutions. During the Hindoo administration, the ryot was the real proprietor of the soil; cultivated land, says the text of Menu, "is the property of him who first cleared and tilled it."

The zemindars under the Mahomedan Government were mere contractors, collectors, or farmers of the revenue, receiving a percentage for their trouble and responsibility, and small grants of land in the shape of nankar or chakeran for their subsistence. I am further of opinion that the settlement was originally made with the ryots, the Sovereign receiving a portion of the crop either in kind or in money, and the ryot the remainder; what this portion was is variously stated by different authorities, but this much is abundantly clear, that the "assul jummabundee" was based upon a rule of proportion and on custom, and not fixed by competition, and that as long as the ryot paid the assessment fixed, or was willing to do so, he was not liable to ejectment.

When the proprietary title in the soil was vested in the zemindars by the British Government, the rights of the ryots were expressly reserved, and the framers of the Perpetual Settlement distinctly intimated to the zemindars that the Government reserved to itself the power of enacting such Regulations as it might deem necessary and proper for the protection of the ryots and other cultivators of the soil, and that no zemindar or other actual proprietor of the land would be entitled on that account to make any objection to the fixed assessment which they had respectively agreed to pay. (See Clause 1, Section 8, Regulation I. of 1793.)

The Honourable Court of Directors, in their Minute conveying their sanction to the Permanent Settlement with the zemindars, remarked—"We expressly reserve the right, which clearly belongs to us as Sovereigns, of *interposing* our authority in making, from time to time, all such regulations as may be necessary to prevent the ryots being improperly *disturbed* in their *possession*, or loaded with unwarrantable exactions, such interposition being clearly consistent with the practice of the Mogul Government, under which it appeared to be a general maxim that the *immediate*

cultivator of the soil duly paying his rent, should not be dispossessed of the land which he occupies." (See page 189, Volume II, Harington's Analysis.)

In the Minute recorded by the Marquis of Cornwallis on the 3rd of February 1790, His Lordship observed "that every beegah of land cultivated by the ryots must have been cultivated by an express or implied engagement, that a certain sum should be paid for each beegah and no more, and that the rents of an estate can only be raised by inducing the ryots to cultivate the more valuable articles of produce, or by clearing the extensive tracts of waste land which are to be found in almost every zemindaree in Bengal." In another part of the same Minute are the following remarks: "Neither is the privilege which the ryots in many parts of Bengal enjoy of holding possession of the spots of land which they cultivate, so long as they pay the revenue assessed upon them, by any means incompatible with the rights of the zemindars. Whoever cultivates the land, the zemindar can receive *no more* than the *established rent* which in most places is fully equal to what the cultivator can afford to pay. To permit him to dispossess one cultivator for the sole purpose of giving the land to another would be vesting him with a power to commit the wanton act of oppression from which he would derive no benefit."

From these remarks, it appears to me clear that His Lordship was sensible that the ryots had rights, and that their rents were fixed upon some established and customary principle.

All the old Regulations from 1793 to 1812 speak of Pergunnah rates as fixed by custom and not by competition, and Section 7, Regulation IV. of 1794, enacts that "no proprietor of land shall require ryots to take out pottahs at higher rates than the established rates of the pergunnah for the same quality and description of land, but that ryots shall be entitled to have such pottahs renewed at the established rates."

The old Sale Laws make clear mention of the established rates; and it was only in 1822, by Regulation XI. of that year, that even an auction-purchaser at a sale for arrears of the Government revenue could eject occupant ryots, and this power of ejectment was taken away from them in the case of ryots with rights of occupancy by Act XI. of 1859.

To come to Act X.—and by this Act alone all suits for enhancement of rent must be determined—we find three classes of ryots defined—

1st.—Those who are protected from enhancement under Sections 3 and 4.

2nd.—Those who have rights of occupancy as declared in Section 6, and whose rent is not liable to enhancement as a rule, but only on certain grounds and circumstances which must be strictly proved by the zemindar; and

3rd.—Tenants who have no right of occupancy, and who may therefore be said to be tenants-at-will.

In the present instance, we are dealing with the cases of ryots coming under the second class.

Admitting, then, that the zemindar has established a ground for enhancement, *viz.*, that the value of the produce has increased otherwise than by the agency or at the expense of the ryot, on what principle is the rent to be enhanced?

Mr. Justice Campbell has very clearly shown in his judgment referring these cases that there is no fixed rule for the guidance of the lower Courts. Each Court proceeds upon some arbitrary rule of its own, and even the same Court is not guided by one uniform rule, though the claim to enhance may be made on one and the very same ground. It is therefore clearly a matter of vital importance to the prosperity of the whole agricultural community that some fixed and certain rule should be established. Anything is better than the present system of doubt and confusion.

Three propositions have been submitted for our consideration:—

1st.—That a ryot who has acquired a right of occupancy under Section 6, has no preference over a third party who has not acquired such right, beyond that of not being liable to ejectment as long as he consents to pay the highest market or competitive rate.

2nd.—That all increase in the value of the produce, after deducting any increase in the expenses of cultivation, which include a fair and equitable rate of wages, interest on stock, &c., is the sole right of the zemindar, and must be added to the old rent, the whole forming the rent payable to the zemindar.

3rd.—That the increased rent should bear to the old rent the same proportion as the former value of the soil bears to its present value.

The first proposition has my unqualified disapproval. It is neither fair nor equitable. It deprives the occupancy-ryot of every privilege which Act X. has vested in him, and relegates him to the position of a mere hired laborer, without a hope or prospect of any amelioration of his wretched condition. The rights of the ryots, though they may have been in abeyance for nearly a century, have never been lost to them; the hope of their recognition has been too long deferred, but those rights have at length been conceded to them by Act X. The Select

Committee who sat on the Bill—Act X.—remarked that the "recognition of a right of occupancy in the ryot necessarily implies some limit to the discretion of the landlord in adjusting the rent of the person possessing such a right." If the ryot with a right of occupancy is liable to ejectment, unless he pays the highest rate of rent that can be obtained by competition, his position is much the same as a tenant-at-will, and the declaration that he has rights of occupancy appears to me to be a mere mockery.

The second proposition is also, in my opinion, neither fair nor equitable. The original adjustment of the rent was made according to customary rates, and the rent payable by the tenant was not rent proper in the sense used by political economists. The zemindar spends no money in improving the land—he takes no risks upon himself of drought, inundation, loss of crops, &c. On what principle of equity and fairness can he claim the whole increase in the value of the crop? Are the ryots to benefit in no degree by a rise in the price of agricultural produce, though they run all the risk?

The third proposition appears to me to come up to the standard of what is fair and equitable to both parties; the theory is one of easy application, it is uniform in its operation, it is one that adapts itself to the simple understanding of the ryot, and is not, as far as I can judge, productive of loss to any party, inasmuch as the rise in the value of the produce and the rise in the rent proceed *pari passu*. All intricate and vexatious enquiries and details, of which both parties are impatient, are rendered unnecessary by its adoption; and as no better rule suggests itself to me, I cannot but give it my unqualified approval. It is ofcourse very difficult to lay down a general rule which shall meet the varied circumstances under which suits for enhancement of rent may be brought; and in assuming the proposed rule as the best adapted for all but exceptional cases, I wish it to be understood that in cases where a special contract exists, binding the parties to other proportions, the rule will not be applied.

Mr. Justice Morgan.—The suit which is before the Division Court in special appeal is a suit by the plaintiff, a purchaser of an estate sold by auction for arrears of Government revenue, against the defendant, a ryot, who has gained a right of occupancy under the 6th Section of Act X. of 1859. In form it is a suit for a kubooleut, but the substantial issue between the parties is admitted to be whether the defendant's rent can be enhanced and at what rate, the value of the produce of the land having increased. The question which has been asked of us by the Division Court, and the only question which, I conceive, it is competent to us authoritatively to answer on this occasion, relates to the principle which the Court should lay down for the guidance of the Deputy Collector on the trial of the suit which is to be remanded to him. Many other questions may arise in the suit, and some have been discussed here, which I think it needless to consider, beyond remarking, with reference to one of the latter, that in my opinion the appropriate form of suit in a case like the present is a suit for enhancement brought after due service of a notice specifying the grounds on which an enhancement of rent is claimed according to the provisions of the 13th Section of Act X. of 1859.

The only rule of decision which the Legislature has provided to guide the Courts in enhancing the rents of ryots having rights of occupancy but not holding at fixed rates of rents, is that contained in the 6th Section. Such ryots "are entitled to receive pottahs at fair and equitable rates."

These indefinite words have, as may well be supposed, received various constructions. In the Courts below, it appears from the case now before us that three widely different interpretations have been given to them; 1st, that the rent should be increased in proportion to the net increase in the value of the produce; 2nd, that the increased rent should be what upon open competition may be obtained as rent; 3rd, that the increase in value should be equally divided between zemindar and ryot. And of this last interpretation, again, it is said by one learned Judge that the principle of dividing the increase equally may in many cases be roughly equitable, while by another the principle is said to be in fact no principle at all, and to be established on no fair and equitable basis.

In this Court there have been two conflicting decisions, which have caused the present case to be referred to the Full Court.

According to the first of these decisions (Hills *vs.* Ishur Ghose) the Court recognized the principle of competition as the mode of ascertaining the fair and equitable rate of rent. In the Chief Justice's judgment disposing of the application for a review, it is said, with reference to the terms of the 5th Section which have been quoted:—"This, in my opinion, gave the ryot no greater right than would be created by a covenant in a lease to renew it at a fair and equitable rent. To be fair and equitable, it must be fair and equitable so far as both parties are concerned, not fair and equitable as regards the ryot, and unfair and inequitable as regards the proprietor of the land; and it would not be fair and equitable to a land-owner to fix the rent at a lower rate than he could obtain from a new tenant if he had not been deprived by the

Act of the Legislature of his power of determining the tenancy and re-letting the land to a new tenant."

According to the later decision (Shib Narain Ghose *vs.* Kashee Proshaud Mookerjeea and others), the rent paid in adjacent places by ryots of the same class for land of equal fertility, will show the fair and equitable rate; or if rents in the neighbourhood have not adjusted themselves to the altered circumstances of the lands, then the adjustment must be "according to the method of proportion, that is, the increased rent must bear to the old rent the same proportion as the former value of the produce of the soil bears to its present value."

I agree with the majority of the Court in holding that the first of these two decisions is erroneous. Whatever may be the fair and equitable mode of adjusting the rent between a zemindar and ryot having a right of occupancy under the Act, I think that it was not intended by the Legislature, and that it is not the true meaning of the words they have employed, to give to such a ryot no greater right or interest in the land than that of retaining possession of it so long as he pays a rent equal to that which other persons having no such right may be willing to pay.

I think if we advert to the previous law, as we must do in order to give a proper construction to the words "fair and equitable," we shall have little difficulty in concluding that this construction is incorrect.

Act X. of 1859 is not for the most part an Act introducing new law. It, is, as the preamble declares, a re-enactment with modifications of the provisions of the then existing law relative (among other things) to the rights of ryots with respect to the delivery of pottahs and the occupancy of land. The Act defined and settled several important questions connected with the relative rights of zemindar and ryot which had remained undefined and unsettled from the commencement of legislation in Bengal; and it further collected in one enactment the existing laws connected with rent and the occupancy of land which were before contained in a great number of Regulations extending over a period of 60 years.

It may be that, while re-enacting and modifying and defining, the Act does in fact, in some respects, also extend the old law in such a way that not only are old rights restored, but some new rights have been created. However this may be, it is our duty to give full effect to all its provisions.

The first question which arises for our decision is whether, by the 6th Section, a right of occupancy is given to all occupants who have occupied their present holdings for 12 years, or only to those who, after the passing of this Act, shall occupy for 12 years. As to this, the rule of construction is clear. Laws are generally to be construed to be prospective, and intended to regulate the future conduct and rights of persons; but where the intention of the Legislature is manifest and unambiguous, the Court is as much bound to give effect to it here as in other cases. The words of the section in my judgment plainly include all occupants for 12 years, as well those whose occupation had commenced before the Act passed, as future occupants; and this view is strengthened by the mode in which old laws are presently repealed, the new enactment being evidently intended forthwith to supply their place.

I have said that, in my opinion, we must look to the previous legislation on this subject in order to construe the Act of 1859. Much of the legislation of 1793 remained in force when the Act passed. I will very briefly state the effect of the principal laws of 1793 and of subsequent years; but before doing so it is also necessary to advert to the state of things prior to the commencement of our legislation.

Before the Permanent Settlement and from a time long previous to our rule. the state of property in land here seems to me to have been a kind of joint ownership between the Government and the cultivators. The revenue of the Government was derived in a great measure from the land. The Government was entitled to a portion of the produce, and the cultivator was entitled to the rest. The share of each was ascertained, and the right of the cultivator to hold his land so long as he paid his assessment to the Government was never questioned. It is true that the State did not limit itself to the share of the produce set apart for it. It was the judge of its own wants, and had the power to exact at will from the cultivator; but, in fact, it so far recognized and respected the established mode of division that its increased demands did not take the shape of an increase in the cultivator's rent, The "*assul jumma*" or original rent remained unchanged. Of the many assessments which burthened the ryot's lands, this one invariably took the lead, and had the semblance at least of governing the mode by which the others were determined.

When I say that the State and the cultivators were together the owners of the lands, I do not mean to deny that intermediate rights of property of various kinds existed. But such right had for the most part, I think, a later origin than the others. They generally (although not always) originated either in the authority which was given to persons of

various degrees to collect from the cultivators the portion of the gross produce which belonged to the State, or in a gift by the State to individuals of its share of the produce. Those who collect the Government share were in fact, so far as the Government was concerned, mere stewards or administrators, holding whatever they possessed in that character by a very precarious and uncertain tenure; but as against the ryôts, they undoubtedly had great powers, and it is certain that they increased their incomes by collecting from the latter, under various names and pretexts, sums far in excess of the amount which they paid to the Government, or which the Government could fairly demand. But whatever was the position and authorities of these intermediate persons, they had of right nothing that was intended by the State to enable them to trench upon the interests possessed by the cultivators, and it was the admitted right of the Government, and one which has never been relinquished, to interpose its authority for the protection of the cultivators. Indeed the ancient revenue system made provision (which perhaps our own system might well have adopted more effectually than it did) at once for the protection of the cultivators from oppression, and for securing the full legal right of the Sovereign, for it was the duty of certain officers who were independent of the zemindars to record and preserve whatever information was requisite to protect the ryot from exactions and the State from loss. The great body of cultivators were persons settled on the lands cultivated by them, and having a right to hold their lands undisturbed so long as they paid their dues, the amount of which was ascertained (so far as it was at all lawfully ascertained) neither by the will of the zemindars nor by competition. As to the latter, it has been well observed that "in a situation in which the revenue of the Sovereign was increased in proportion to the number of cultivators, and in which a great proportion of the land continued void of cultivators, there would be a competition, not of cultivators for the land, but of the land for cultivators. If a ryot cultivated a piece of ground, and punctually paid his assessment, the Sovereign would be far from any wish to remove him, because it would be difficult to supply his place." There were also other cultivators who migrated from time to time from one place to another. The former, the khoodkasht, were by far the most numerous and important class. The latter, the pykasht ryots, had little or none of the local attachment which facilitated exaction from the fixed occupant. They would not submit to so high an assessment as the khoodkasht; and when they were oppressed they easily abandoned the lands cultivated by them.

When the British Government had succeeded to the rights of the former Rulers and had experienced the evils arising from an arbitrary and uncertain assessment of the Government revenue, it was resolved to fix permanently the annual payment to be received by the Government (so as to give inducements to other persons having interests in the land to improve and extend cultivation), and also to convert the zemindars into land-owners.

The Regulations of 1793 finally established the permanency of the settlement. Those Regulations and the contemporaneous public papers, which have been quoted on both sides during the argument, clearly show both what was then given to the zemindar and what was withheld from him. In my judgment he received nothing from the State which can justify the argument which has been put forward on his behalf, that his vested rights are impaired by the construction of the late Act which we are about to adopt. By the limitation of the Government demand and the conversion of his zemindar's tenure into a right of proprietorship he gained much. Henceforward he alone was entitled to the profits to arise from the cultivation of the vast tracts which then lay waste and uncultivated, and from the growth by the ryots of the more valuable articles of produce on which an increased rent was payable. But the estate of which he became the proprietor was not an unencumbered estate, with which he was free to deal as if he alone were the proprietor. Besides the Government revenue, there were other charges upon it which materially limited his ownership. The ryots having rights of occupancy did not derive their rights from him, but from a title anterior to his; and the Government, in its bounty to the zemindar, gave only what it justly could give, that is to say, what belonged to itself, not what belonged to others. Nothing was given to him which could trench upon the cultivators' rights or which could justify a continuance by him of the exactions by which the ryot had been oppressed in former days. The laws of 1793 distinctly prohibited the imposition of any new abwab or cess. They directed the consolidation of all existing demands, and the issue of pottahs with the amount or rate of rent specifically adjusted. They also provided for the renewal of pottahs at determinate rates when cancelled under the rules existing against collusive or improvident agreements. The zemindar was bound to respect the leases in force at the time of the Settlement. He was allowed to let the remaining lands of his estate in whatever manner he thought fit *under the restriction prescribed by law* (*see* Reg. VIII. of 1793, section 52.) He was free to engage or not with a new-comer; but as regards all ryots on his estate who were entitled to demand pottahs, he was bound, if a dispute arose

concerning the rate of rent, to submit the matter to the decision of the District Court (Reg. IV. of 1794), which was directed to fix the rent "according to the rates established in the pergunnah" for similar lands. These provisions at least show the intention of the Legislature to protect the ryots from enhancement at the discretion of the zemindar or otherwise than by determinate rates.

But, unfortunately, while the rights of the State and of the new proprietors were defined by law with sufficient certainty, all attempt to define the rights of the cultivators was postponed. The remedy given to them by suit in Court was practically worthless, or of little avail, because no sufficient rules for the guidance of the Courts had been provided by the Legislature (which has authority to give, and is bound to give, the tribunals the rule of decision and not to devolve upon them the task of searching for and inventing rules). The ascertainment of the established rates of the pergunnah appears even at that period to have been a matter of great difficulty and uncertainty.

The laws of subsequent years tended more and more to depress and injure the great mass of cultivators having rights of occupancy. The powers which the Government had thought necessary to reserve to itself for the recovery of the land revenue from the zemindars were far greater than those possessed by the zemindars for the recovery of their rent from the ryots. It was therefore found necessary in 1799 to give the zemindars (Regulation VII. of 1799) summary and stringent powers against the ryots, including what was understood to be a power to oust the cultivator from his lands, leaving to him the remedy of a regular suit for their recovery, if he felt aggrieved. No measures were meanwhile attempted for the ascertainment or more effectual maintenance of the cultivator's rights, and in 1812 it seems to have been thought by the Legislature that all further endeavour in that direction was hopeless. The Regulations of 1812, by which the zemindar and ryot were authorized to make engagements at any rate of rent and for any term, have been regarded in very different lights. On the one hand, it has been supposed that they merely took away the old restriction on the zemindar's power of leasing without in any way affecting the ryot's rights, while, on the other hand, they have been regarded as having authorized the ouster of even the hereditary ryots from the possession of their lands when they refused to accede to any terms of rent which might be demanded of them, however exorbitant.

Whichever view may be correct, these Regulations of 1812 were no part or condition of the Permanent Settlement.

That portion of the permanent zemindary system which gave powers to the Government to sell the zemindar's estate for arrears of revenue further tended materially to injure the ryots. Whatever bonds may previously have united the two classes of hereditary payers and receivers of the land revenue, they were materially weakened by the operation of the Sale Laws. The precise nature of the interest and title conveyed to persons purchasing at public sales for arrears of revenue was not defined by the first Sale Law, under which a vast number of sales took place; and serious injury was doubtless sustained by the inferior tenants, in consequence of the latitude given to auction-purchasers. All the old engagements were cancelled by the law. It is true that the ryot was entitled to claim a new pottah at the pergunnah rate, and he might resort to the Courts to obtain it; but this remedy was, as has been already stated, practically of little or no value.

The later Sale Laws of 1841 and 1845 contained provisions still more unfavourable to the cultivators, for they gave to purchasers unlimited powers of ejectment and of enhancing the rents of ryots. They reserved the rights of a class who were described as "khoodkasht *or* kudeemee ryots," referring apparently to the same class who had been described in the previous Sale Law (Regulation XI. of 1822) as "khoodkasht kudeemee ryots or resident and hereditary cultivators." This reservation introduced a distinction between "khoodkasht" and "kuddeemee khoodkasht," and was, I suppose, framed to give protection to no other than the khoodkasht of the time of the Permanent Settlement, and to those who derived their holdings by inheritance from him. But even as regards the class thus saved, after the lapse of half a century, during which the law was ineffectual adequately to protect the cultivators, this class of ryots would necessarily be under great difficulties in supporting their rights by sufficient evidence.

The khoodkashts were generally little disposed to comply with the law respecting pottahs. Their holdings were usually antecedent to written engagements, and they objected to any writing defining the amount of rent payable by them, from an apprehension that it might be regarded as derogating from their previous undoubted rights and creating a new and less certain title.

The combined effect of the several causes which have been referred to, and mainly the

defective legislation of 1793, and the omission of all attempt to define the rights of the cultivators, together with the adverse tendency of subsequent legislation, was that the undoubted rights of the great mass of the cultivators to hold their lands exempt from arbitrary enhancement, and subject only to customary rates of rent, were merely obliterated and lost. The object of the Act of 1859, apparently, was to restore those rights; and to do this, it was necessary to define the class of persons who should be considered to have rights of occupancy. The 3rd and 4th sections relate to ryots who have held at fixed rates of rent from the time of the Permanent Settlement, and to the proof necessary in support of their rights. The following sections relate to those whose holdings are at rates not fixed. Before its enactment, the great majority of cultivating ryots, had their rights been duly observed and maintained, were entitled to hold their lands undisturbed on the due payment of their rent, and could not be compelled to pay rent at a rate dependent on the mere will of the zemindar, or otherwise than according to the customary rates or those prevailing in the district. The ryots generally were not migratory, but remained settled on the lands which they occupied. I do not think that the right of occupancy was formerly confined to those who had acquired such a right by prescription. It extended to all who had given unequivocal proof that they intended permanently to remain at the place of their settlement, and who had been recognized as fixed residents of the locality, although their holding may have been of recent date. The khoodkashts were doubtless, ordinarily, persons who derived their holdings from their ancestors, and whose rights were of old date; but I agree in what I understand to be the opinion of other members of the Court, that length of time or ancient origin was not essential to his existence, and that the language of the later Sale Laws unjustly limited the protection given to this class by recognizing only the rights of the kudeemee or ancient khoodkasht.

Having regard to past history and legislation, which seem to me in such a matter as the present to be our necessary guides, I feel bound to say that those who have rights of occupancy under Section 6 of the Act are fairly and equitably entitled to a more substantial right than that merely of holding at such a rate as mere strangers might fairly be asked to pay. And since the Legislature, when it imposed upon the Courts the task of dividing the increased value of the produce of the land between zemindar and cultivator (giving no other rule of decision than this—that the rate to be paid by the latter must be fair and equitable), could not have meant to entrust the Courts with an arbitrary discretion to make any division which might appear to them fair, I think we should construe the words as near as may be in the sense which they would have borne in the old law, in settling the relation between landlords and ryots having rights of occupancy, that is, in my judgment, that the fair and equitable rate is the rate ruling in the neighbourhood (as described in the 1st Clause of the 17th Section). If the tenant holds at a rate below this, his rent should be enhanced to this level.

When the rents of adjacent lands have not adjusted themselves to the increased value of produce, "the method of proportion" is suggested to be that which was contemplated by the Legislature by the words "fair and equitable." I do not dissent from this view, and I can myself suggest no more probable meaning. It is remarkable that no distinct provision appears to have existed formerly for a general enhancement of the customary rates. The State, in former days before the land revenue was fixed, and the zemindar always were able by means of abwabs or other cesses to obtain from the ryots more than a full equivalent for any increase in the value of produce. The law has now prohibited all such cesses and requires a consolidated rent to be fixed.

It was never intended that rents should not be fairly raised as the value of produce increased; but unfortunately no distinct rule has been laid down for their enhancement where the existing rates of rent in the neighbourhood have remained unaltered, notwithstanding a general rise in the value of produce. I have said that I do not dissent from the proposed "method of proportion;" but it is not without doubt as to whether this is the correct construction in the case supposed of the words "fair and equitable," that I concur in this portion of the judgment with the majority of the Court. In their conclusion regarding the other questions I fully agree.

Mr. Justice Norman.—This case is referred to us in consequence of the conflicting decisions in Hills *versus* Ishur Ghose on the one hand, and Haran Mohun Mookerjee *versus* Thakoor Doss Mundul, 14th September 1864, and Kashee Persaud Mookerjee *versus* Sibnarain Ghose, 26th November 1864, on the other.

I do not think it possible to answer the questions simply as they are put. They present alternatives of which I cannot exactly accept either.

In considering the question of ryots' rents, it was not unnatural that the Court, in Hills *versus* Ishur Ghose, should have adopted, as a rule for ascertaining a ryot's rent, the well known definition of Malthus, more particularly as a rule somewhat similar in terms is well

known and is applied successfully and satisfactorily in English Courts for the purpose of ascertaining for rating purposes under the 6th and 7th W. 4. (c. 96. s. 1), the rent which a tenant might be excepted to give, so as to get at the "net annual value" of railways, gas-works, water works, and other undertakings not usually let at a rent.

Mr. Malthus defines rent to be "that portion of the value of the whole produce which remains to the owner of the land after all the outgoings belonging to its cultivation of whatever kind have been paid, including the profits of capital employed, estimated according to the usual and ordinary rate of agricultural stock at the time being."

In a Minute on the working of Act X. which, I believe, is now published, I have given my reasons for thinking that this definition of rent is unsound. It appears to be a statement of the mode in which, and extent to which, the laws of supply and demand act upon rents, rather than a true definition of any rent that ever was, or in the nature of things will be paid by a tenant to the owner of the land.

Mr. Malthus' definition, taken literally, makes rent the balance of profit over all outgoings including the estimated profit of agricultural stock, a quantity utterly uncertain and fluctuating from year to year with every change of the seasons or market. Whereas, if there is any one quality which can be predicated of ordinary rent, it is that it is in its nature certain.

The Court in Hills *versus* Ishur Ghose did not apply the rule literally, and corrected it to some extent by taking an average over several years. But the modified rule as applied in Ishur Ghose's case, in which the Court alters the words "Agricultural Stock" into "Agricultural Capital," does not in its terms appear to me to make any sufficient allowance for tenant's profits, *viz*, profits equal to the return which the employment of equal skill and capital in any other occupation or investment might be expected to produce over and above the wages of labor and the bare interest of money.

In the elaborate enquiries necessary in order to apply Mr. Malthus' definition as a rule for the ascertainment of a ryot's rent, it was found that the system broke down by its own weight.

In a case alluded to by the Chief Justice in his Minute on Act X. tried before Mr. Grey, it took two months to record the evidence which was given in one suit, for the purpose of showing what was the fair and equitable rent to be paid for a few bighas of land. Therefore, even if the definition is correct, it does furnish a practical working rule capable of being applied by Courts of Justice in dealing with ryots' rents.

But the original theory of rent in this country, and the rates which, under the laws and customs of this country prior to Act X., were practically obtainable by zemindars, make rent in this country something very different from that which is defined by Mr. Malthus.

At the time of the Decennial Settlement it was recognized that, by the ancient law of the country, the ruling power was entitled to a certain proportion of the produce of every beegah of land (*see* Preamble, Regulation XIX. of 1793). Of this public demand, which was then the sole rent demandable from the ryots, ten-elevenths were considered as the right of the public, and the remainder the share of the zemindar (*see* Preamble, Regulation I. of 1793). Thus, the original theory of rent in this country appears to have been that it was a right to a certain proportion of the gross produce. The Regulations of 1793 which have been already referred to at great length, while formally declaring the property in the soil to be in the zemindars, make provision for the protection of the ryots in their holdings, and for regulating the amount of rent to which they were to be subject.

According to the old Regulation,* if disputes arose between the zemindar and the tenant, the dispute was to be adjusted according to the pergunnah rate, and not according to the rate which a zemindar might obtain if he could let his land to the best bidder; and this continued to be the law down to the passing of Act X. of 1859.

Mr. Justice Trevor has shown what the purgunnah rates originally were.

The increasing competition for land, the rents which new tenants paid for land unoccupied or previously held by ryots not having rights of occupancy, or under the contracts which parties would enter into for leases in pursuance of the liberty given to zemindars under Regulation XLIV. of 1793, would naturally tend to raise the average of rents.

The imperfect records of such transactions might be expected to introduce uncertainty into the pergunnah rates.

Accordingly, in Regulation V. of 1812, we find that it was declared that "there was

* Regulation VIII. of 1793, Section 60.
" IV. of 1794, Sections 6-7.
" XLIV. of 1793, Section 5.
" VII. of 1799, Section 29, Clause 5.
" LI. of 1793, Section 10.

reason to believe that the pergunnah rates were in many instances very uncertain." By Section 6 it was enacted that, "if any known pergunnah rate shall exist, the same shall serve to determine the amount of rent which should be received by persons deputed to attach lands on the part of Government, or by the purchasers at the public sales." Section 7 enacted that, "in cases in which no established rates of the pergunnah or local division of the country may be known, pottahs shall be granted, &c., according to the rate payable for land of a similar description in the places adjacent; but if the leases and pottahs of the tenants of an estate generally, which may consist of an entire village or other local division, be liable to be cancelled under the rules above noticed (the Sale Law Regulation, Section 5, Regulation XLIV. of 1793), new pottahs shall be granted, and the collections made at rates not exceeding the highest rate paid for the same land in any one year within the period of the three last years antecedent to the period at which the leases may be cancelled."

These provisions appear to me to show that, although the zemindars were by the Regulations constituted owners of the land, such ownership was not absolute. The Regulations which created a right of property in the zemindars do not recognize any absolute right in them to fix the rents of the lands at their own discretion. It is clear that, down to 1812, not even a purchaser at a sale for arrears of revenue could enhance the rents of his ryot beyond the pergunnah rates.

Regulation XLIV. of 1793 had empowered the parties to enter into engagements for a period of years at any rate of rent they pleased, and that power was extended by Section 2, Regulation V. of 1812. But if the parties could not agree, the pottahs which, by Regulation IV. of 1794, Section 7, were to be at the pergunnah rates, if no established pergunnah rates were known, were, by section 7 of the later Regulation, to be at rates payable for land of a similar description in the places adjacent. Regulation XI. of 1822 would seem materially to abridge the rights which under the former Regulations khoodkasht ryots in Bengal had previously possessed. But it probably did not affect any but the ryots of lands sold under that Regulation for arrears of revenue. There is nothing in that Regulation to affect the right of those who continued in occupation to hold at the pergunnah rates. Section 27, Act XII. of 1841, since repealed, but re-enacted by Act I. of 1845, Section 26, provided that a purchaser at a sale for arrears of Government revenue made under that Act might enhance *at discretion* after notice, &c. (anything in the existing Regulations to the contrary notwithstanding), the rents of all under-tenures in the said estate, and eject all tenants thereof, with the exception, among others, of "*lands held by khoodkasht or kudeemee ryots having rights of occupancy at fixed rates or at rents assessable according to fixed rules under the Regulations in force.*"

Therefore, down to the passing of Act X. of 1859, no zemindar, except the very small class of purchasers under Acts XII. of 1841 and I. of 1845, suing to enhance the rent of a ryot, would be entitled to a decree except according to the pergunnah rate, or, if the pergunnah rate could not be ascertained, the rate payable for land of a similar description in places adjacent.

It was no doubt competent to the zemindar to dispossess any of the very large class of ryots who had no rights of occupancy who would not agree to his terms, and to enter into fresh arrangements with others at any rate of rent on which the parties could agree. But such a course of proceeding for raising rents was apparently not contemplated by the Regulations. In fact the circumstances of the country have been such that, while, on the one hand, no zemindar would wish to lose his ryots, on the other the ryots cling to the soil; and the contest between the parties naturally would be, and I believe was, fought out in suits for enhancement, and not by a system of ejectment.

It may well have been one of the objects of Act X. to prevent this powerful engine of extensive ejectment from being brought to bear on a body of cultivators, large numbers of whom must have had some sort of prescriptive right, vague and indefinite as it may have been, to occupy or cultivate the soil.

No doubt the right of occupancy before the passing of Act X. of 1859 was exceedingly ill-defined. There is a good deal in the Regulations which leads to the inference that khoodkasht ryots, resident cultivators, in Bengal, whether kudeemee or not, had by custom a right of occupancy so long as they paid the usual rate. It seems to me this custom is recognized in all the Regulations down to XI. of 1822. And a reason for that custom has been suggested to me, *viz.*, that the building or purchasing a house in the village is a security to the zemindar for the ryot continuing to occupy as tenant.

There appears to be no doubt also that pykasht ryots had in many instances rights of occupancy. (See Directions for Revenue Officers in the North-Western Provinces, page 64.)

Such rights were not only uncertain, but, if ancient, were, from the character and position of the parties by whom they were possessed, often exceedingly difficult of proof.

Act X. does not treat the zemindar's interest as absolute and unqualified so as to enable

him to let his land to the *best bidder*. The 17th section distinctly restrains the absolute power of the zemindar to fix his own price for the use of his land. It matters not how many persons may be willing for their own purposes to give him double or treble the existing rent. He cannot claim increased rent from his ryot unless he can bring the case under the first or second clause of that section. The zemindar is therefore evidently under some circumstances bound to take from the ryot lower rates than he might obtain from new ryots if he were at liberty to treat with them.

If, then, the original theory of rent in this country is that it is the zemindar's proportion of the produce, it seems not unnaturally to follow that (in the absence of any special circumstances) to say that such a rent is fair and equitable is equivalent to saying that a fair and equitable portion of the produce of the land has been set apart for the land-owner. If it be said that this limits the power of a zemindar to get a rack-rent for the land, I answer that such power is expressly limited by Act X., and that practically such power was limited under the Regulations in force at the time of the passing of Act X.

It is no part of our duty to defend the restrictions on the enhancement of rents introduced by Act X. We have simply to construe and give effect to the Act in the best way we can.

When Section 17 says that no ryot having a right of occupancy shall be liable to have his rent enhanced except on particular grounds, it appears to me that, if enhancement is sought on any one of such grounds, the ground of enhancement must also furnish the measure of the extent to which the enhancement can be permitted.

I agree with the Chief Justice in thinking that ryots holding at fixed rates of rent, or claiming any definite or specific privileges in respect of rent, must be dealt with as ryots claiming to hold lands at fixed rents, or fixed rates of rent under the third and fourth sections, and for the present we may lay their cases out of consideration in dealing with ryots having rights of occupancy under Sections 5, 6, and 17. No doubt it is possible to suppose cases in which rents payable at privileged rates might be enhanceable under the latter section.

1. With respect to the rents of ryots having mere rights of occupancy, a zemindar is entitled to claim from his ryots such rents as are paid by the same class of ryots for land of a similar description and with similar advantages in places adjacent. By the "same class of ryots," I understand ryots not holding at fixed rates of rent or with any peculiar privileges as to the rates of rent.

2. If such rents are too low, and the zemindar comes in simply on the allegation that the value of the produce has become increased otherwise than by the agency or at the expense of the ryot, he shows *an increase in the value of that which primarily belongs to the producer, to a proportion of which alone the zemindar is entitled.* I think it must be taken that the old rent was fair and equitable, in other words, that at the time when it was fixed, it was the money value of the zemindar's fair share of the produce of the land; and, in order to give to the zemindar the same share of the produce which he formerly enjoyed, it is only necessary to give him an amount of rent which shall bear the same proportion to the old rent which the present price of the produce does to the former price. The ryot is surely entitled to the same share of the produce as he was under the former engagement, to whatever extent the price of such produce may have increased. It is for the zemindar who seeks enhancement to prove his case, and he must carry back his evidence as nearly as he can to the time when the rent was fixed.

3. If the rent consists partly of money and partly of services, or something equivalent to services, as an obligation to cultivate and supply indigo at a certain price, the value of such contract would have to be estimated and added to the old rent, and in such cases the aggregate value would form a term in the proportion.

4. If a ryot is holding *below the rates* paid by his neighbours, and in consequence of the *increase of the value of produce*, those rates are themselves too low, I think a zemindar may be entitled to the benefit of both grounds of enhancement in the same suit.

5. It may be taken roughly, in the absence of evidence to the contrary, that in general the cost of cultivation will have increased in a ratio proportionate to that of the increased price of produce. But in exceptional cases it may no doubt be found that the particular crop for which the land is specially fitted, as cotton, or crops on land in the vicinity of a town has greatly increased in value without any general equivalent rise in the price of labor or the cost of food,—In such cases, if the zemindar is not in a position to make out a case under the first Clause, the increased profit may be divided between the zemindar and the tenant as may appear reasonable under the special circumstances of the case; and in like manner any extraordinary increase in the cost of production may be proved by the ryot in answer to the claim for enhancement on the ground of enhanced price of produce.

6. If the *productive powers of the land have increased* otherwise than by the agency or at the expense of the ryot, as was said to have been recently the case with lands on the bank

of the Damoodah protected from flooding by the embankments of the railway, so that the land is capable of producing larger or more valuable crops as a return for the same outlay and the same labor, the whole of such increase appears to me to belong to the zemindar. It is *an increase in the value of that which exclusively belongs to him;* and in adjusting rent under the 17th Section, it appears to me that the zemindar is entitled to the benefit of such increase subject to any increased expenses which may be caused to the tenant by the collection or realization of the larger profit.

We are all agreed that Act X. applies to all holdings existing at the time of its passing.

As to the question whether the suit is maintainable at all.

In the case of Ramnath Chowdry *versus* Bhoobunmohun Biswas, Sutherland's Full Bench Rulings, p. 183, in which I was in the minority, I gave my reasons for thinking that a suit for a kubooleut is not maintainable except in the case provided for by Section 9. The ryot may sue for a pottah because he has a right to occupy. But the zemindar has no right to compel the ryot to continue as his tenant, and consequently no right to sue or compel him to enter into an agreement as to the terms of a future occupation; far less to call on him to execute a kubooleut for a definite term of years as is prayed in this suit.

I think further that Act X. protects a ryot from all enhancement of his rent except after notice and under the provisions of Section 13. It appears to me that, in entertaining a suit like that now before the Court, we are not redressing any wrong or making a declaration as to any existing right, but are assuming to determine what shall be the conditions of a future contract between the parties. And this, as it appears to me, is beyond the functions of any Court of Justice. One test is conclusive, *viz.*, if the ryot does not like our decision, he cannot be compelled to execute the kubooleut, and may throw up his land at his own free-will and pleasure. Had the Courts refused to entertain suits for kubooleuts, had they confined themselves to trying suits for enhanced rent under Section 13, I think much litigation would have been saved. The parties in each case would have had a considerable time after the service of notice, and before litigation could be commenced, during which they might have treated or had time to consider whether the terms demanded were fair or not. During such negociation and discussion between the parties as would probably have ensued, each party would have had an opportunity of ascertaining the views of the other, and even if the ryot did not submit and no terms were settled, some approximation to an arrangement might have been made, and the question for decision might in many cases have been most materially narrowed.

Mr. Justice Steer.—Though I concur in the rule of proportion as held by Mr. Justice Trevor and Mr. Justice Campbell, I do not concur in all their views in regard to the *status* and the rights of the ryots prior to the enactment of Act X. It is necessary, therefore, that I should record a separate judgment from those learned Judges, and I will therefore proceed to read what I have recorded.

A great deal of argument was used by the Counsel for the landlord and by the Counsel for the tenant, respectively, as to the *status* of the Bengal zemindar and the Bengal ryot previous to the enactment of Act X. of 1859.

The changes wrought by Act X. have, no doubt, made the consideration of this subject of comparative minor importance; still it is not to be passed over as immaterial, for it is of consequence to know what the rights of the tenants were under the old laws in considering upon what principle their rents ought to be enhanced when the new law permits it to be enhanced at all.

Whatever uncertainty existed as to the past condition of the ryots, Act X. of 1859 has made it clear what their present *status* actually is.

The Act divides the whole body of the ryots into three classes—

1st.—Ryots who have held at fixed rates from the date of the Permanent Settlement.

2nd.—Ryots who have acquired a right of occupancy by a 12 years' holding.

3rd.—Ryots who have not occupied for 12 years.

In respect to the 1st class of ryots, the Act declares them absolutely exempted from enhancement, with right of occupancy of course.

In respect to the 2nd class, the same law declares that, on certain grounds shown to exist, their rents may be raised, but the enhanced rent must be a fair and equitable rent, upon which terms they are entitled to occupancy.

With respect to the 3rd class, the law leaves them entirely at the mercy of the landlord, both in respect to rent and in respect to occupancy.

No difficulty exists as to the rights declared to attach to the 1st class of ryots; and the great and the almost insuperable difficulty this class labored under before the passing of Act X. to adduce proof of payment of rent at a uniform rate from the Permanent Settlement, has been in a great measure removed by the presumption which the law raises in their favor, *viz.*, the

presumption arising from the proof of a uniform payment for 20 years, that the rent has not varied since the Permanent Settlement.

As this class of ryots stood before, they were not only required to prove that they held their lands at a fixed rate from the Permanent Settlement, but that they held them at those rates 12 years before the Permanent Settlement, and that by actual proof. Therefore, when Act X. dispensed with positive proof of a fixed payment of rent from a period 12 years antecedent to the Permanent Settlement, and when it raised a presumption of payment at fixed rates from the Permanent Settlement by proof adduced of payment at an uniform rate for 20 years, it must be admitted that very large concessions were made in favor of this class of ryots.

Great and undoubted, however, as the above concessions were in favor of the above always somewhat privileged class of ryots, they were altogether eclipsed by those which the Act conferred on the next class of ryots.

That a right of occupancy was acquired by anything short of an occupation from a period prior to the Permanent Settlement, an occupation which entitled the ryot to be called a khoodkasht ryot, has always been, I think, a matter of doubt. But no manner of doubt can be entertained that the 12 years' occupancy right was altogether unheard of before the Act suddenly conferred the right.

What ryots were entitled under the old laws to be called khoodkasht ryots, and what ryots were entitled to be considered as ryots who had acquired a prescriptive right of occupancy, are subjects which, I think, have never been cleared up, either by the express authority of law, or by the authority of any judicial ruling. Are khoodkasht ryots then, as spoken of in the Regulations, those, and exclusively those, who were khoodkasht at the time of the Permanent Settlment? or does the term khoodkasht embrace also those ryots who, since the time of the Permanent Settlement, had, by a long residence in the village in which they held and cultivated land, acquired a prescriptive right of occupancy? These were, I think, even up to the passing of Act X., moot questions, and are so still.

While no doubt exists as to the right of those ryots who, from generation to generation, have cultivated the lands of the village in which they reside for a period antecedent to the Permanent Settlement, and who without any doubt are entitled to be called and classed with khoodkasht ryots, the greatest doubt exists as to whether any other class or description of ryots are entitled to be called khoodkasht ryots. If any ryot whose tenure came into existence since the Permanent Settlement, can, by any means, be called a khoodkasht ryot at all, it certainly is not the ryot who simply lives in the village and cultivates the land of the village. To be a khoodkasht ryot at all, implies that the ryot must not only be a cultivator of lands belonging to the village in which he resides, but he must be an hereditary husbandman. A khoodkasht right is not acquired in a day, but is transmitted; and it has never, so far as my knowledge extends, ever been laid down what exact length of holding gives a title to a tenant to consider himself a khoodkasht ryot.

Certainly, the old Regulations seem to point to other than those undoubted khoodkasht ryots whom the Permanent Settlement found upon the land; but what length of holding constituted a right by prescription, has never been definitely or inflexibly laid down. If decisions are to be found in which a prescriptive right was deemed established by an occupation short of the Permanent Settlement, there are, on the other hand, plenty of decisions to show that length of occupancy was not deemed to entitle the tenant to be considered anything better than a tenant-at-will. If any other but the ancient ryot occupying from generation to generation had the right of occupancy, no others had it; and, therefore, in a vast majority of cases, Act X. by the 12 years' rule of occupancy has created rights which never existed before.

Under the old law, then, a great majority of the ryots who now have undoubted rights of occupancy at fair and equitable rates, were at the mercy of their landlords, and Act X. has in fact put all these ryots of doubtful position on the same level. Whether the distinction between the old holder and the modern holder was purposely not recognized by the Legislature when it enacted Act X., for the reason that both were, before the passing of Act X., upon the same footing as respects their position to the zemindar, I cannot say; but certainly, when no distinction has been made between the two descriptions of ryots, he who has been immemorially on the land, and he who came there only twelve years ago, it would seem that in the mind of the Legislature there was really no difference between them; neither had acquired a right of occupancy as against the zemindar, and neither could, therefore, compel him to recognize them, or force him to enter into engagements with them on any terms.

If, then, the Legislature has not intended that there should be any distinction between the ryot whose forefathers, it may be, first broke up the soil on which his descendants have ever since settled, and the ryot who found the land ready to his hand by the labor of others

the distinction need not have any effect with the Court in laying down the principle which is to be observed in determining what is a fair and equitable rent. What is fair for one, we must take to be fair for the other.

Three separate propositions have been put forward as to the mode of arriving at a fair and equitable rent in the case of a rise in the value of produce otherwise than by the agency of the ryot.

The propositions are—

1st.—That the rent be left to competition, and that the zemindar be allowed whatever rent he could obtain from any other ryot.

2nd.—That the rent be adjusted thus: give the ryot the benefit of all the profit he now derives from his lands from the last adjustment of his rent; give him, besides, out of the increased value of the produce, what will repay him for the increased cost of production, and hand over the entire surplus to the zemindar.

3rd.—That the rent be adjusted thus: presuming that the old rent bore a just proportion to the old produce, give to the zemindar the same proportion as rent out of the present produce.

With respect to the 1st proposition, such a rule would, I think, not be equitable in the case of any, except a very few of the ryots, to whom the law has given a right of occupancy. To say that a man has a right of occupancy, and at the same time to put it in the power of the zemindar to deprive him of it by putting his land, as it were, up to auction to the highest bidder, would be unfair to the ryot and frustrate the intention of the law.

To show the effect of the second proposition, the following case may be taken:—

Former gross produce.	Cost of production.	Rent.	Ryot's profit.
Rs.	Rs.	Rs.	Rs.
30	10	10	10

If the value of the produce be doubled, then out of the 30 Rupees increase, say you deduct 8 Rupees as the increase in the cost of production, and the remaining 22 the rule would give to the zemindar. The case would then stand thus—

Gross produce.	Cost of production.	Rent.	Ryot's profit.
Rs.	Rs.	Rs.	Rs.
60	18	32	10

Under the third proposition, the following case may serve as an illustration:—

Former gross produce.	Former rent.	Ryot's profit, including cost of production.
Rs.	Rs.	Rs.
30	10	20

Say that the value of the produce has doubled, then the case would stand thus—

Present gross produce.	Present rent.	Ryot's present profit, including cost of production.
Rs.	Rs.	Rs.
60	20	40

If the second proposition is adopted, there will in every case arise a necessity for lengthened and difficult enquiries. To work out such a rule, it must be ascertained:—

1st.—What was the value of the produce when the rent was last adjusted?

2nd.—What was the cost of production?

3rd.—What was the share of profit left to the ryot after his rent was paid? This would, however, only carry the case over the first stage; there would still remain to be ascertained—

1st.—The present value of the produce.

2nd.—What rise has taken place on the cost of production. To do this in every case would occasion such an amount of labor that the constituted Courts of the country could never get through it. Moreover, it does not seem fair and equitable that the ryot should get no share whatever of the increase in the value of the produce of his lands, and that, though the value of agricultural produce had immensely increased, he himself is to derive not a particle of advantage from it.

The third proposition is certainly more simple and apparently equitable; such a rule would involve only two points of enquiry *viz.*, the former value of the produce, and the present value of the produce. These points ascertained, the rule could be worked out.

As a general rule, it may, I think, be fairly assumed that the last adjustment of rents was made upon a principle considered fair and equitable to both parties; and that the rent, as compared with the produce, represented the sum which the zemindar was willing to take,

and the ryot to pay, as rent. That being, then, in the nature of a contract between the parties under the then state of circumstances, it is only necessary to carry out the principle of that contract into the present state of circumstances, to get at a fair and equitable rent. If the former rent was fair as compared with the former value of the produce, the same rule of proportion, if carried out, would give a fair rent now; and as a general rule, I think this is the rule which should prevail.

It is true that, where the cost of production has not increased in the same ratio with the increase which has taken place in the value of produce, the rule would give to the ryot the larger share of the increase. But it may, I think, be safely inferred that the cost of production would generally keep pace, or nearly so, with the increase in the value of produce, and the rule would scarcely ever be found to operate with too great advantage to the ryot.

If the cost of production has doubled at the same time that the value of the produce has doubled, then the rule, which allows the zemindar to double his claim upon the ryot, is a fair mode of adjusting the matter. But if in any case the zemindar or the ryot could show that the former rent was not fixed with any reference to the former value of the produce, or that, for some special reasons existing at the time, the rent was fixed at too high or too low a figure, then the case would form an exception to the rule, and have, of course, to be treated differently. These exceptional cases would, however, not be numerous, and the rule would serve in all the ordinary cases.

This rule of proportion could not be called into requisition in those cases where it could be shown that the former rent was regulated with reference to some contract, or with reference to some ascertainable mode, whereby either party got a certain fixed or regulated share of the profits. Wherever there was this contract, or custom, or usage, it should be given effect to in any future adjustment of the rent.

I may add that I think Section 6 of Act X. was meant to be retrospective, and I have already expressed my opinion, elsewhere in these notes, that the Act created rights of occupancy which never existed before, and that in that respect the law was not declaratory but enacting.

Sir Barnes Peacock, C.J.—This is a Special Appeal from the decision of the Judge of the 24-Pergunnahs in a suit brought for a kubooleut at an enhanced rent. The Judges who heard the Special Appeal (Mr. Justice Campbell and Mr. Justice Elphinstone Jackson) have decided that the case must be remanded, and in order to enable them to declare for the guidance of the lower Courts the principle which ought to be adopted in enhancing the rents of ryots having rights of occupancy where there has been an increase in the value of the produce, they have requested the opinion of a Full Bench on the following questions:—

1st.—When there has been an increase in the value of the produce arising from an increase in prices, and the zemindar is entitled to a new kubooleut from an occupancy-ryot at an enhanced rent at fair and equitable rates, is the fair and equitable rate to be awarded, the rate which might be obtained by commercial competition in the market, or is it a rate to be determined by the custom of the neighbourhood in regard to the same class of ryots?

2nd.—If the customary rate of the neighbourhood has not been adjusted with reference to the increased value of produce, then on what principle is the enhancement of that customary rate to be adjusted?

The learned Judge, Mr. Justice Campbell, in his judgment to-day, says, "in the present case no attempt is made to contradict or deny the ryot's assertion of ancient holding." But the questions which I must assume were carefully prepared, are general and refer generally to occupancy-ryots, and make no distinction between holdings which are ancient and those which are of modern date.

Although the first question refers to an increase in value arising only from rise of prices, I think that the rule which we lay down will be equally applicable to cases in which the increase has been caused by the proximity of a road, or of a canal, or railway, opening a new source for carrying to distant parts produce which for want of roads was formerly necessarily consumed in the immediate neighbourhood. Such causes may raise the value of produce without materially raising the price of labor, or adding to the expenses of production. But we must take care, lest, in answering a general question, and treating it as applicable to particular circumstances, we do not express an opinion which may hereafter be considered as applicable to all cases falling within the general question propounded. My answer is, therefore, confined to the question asked. If there was anything with reference to the antiquity of the holding which takes it out of the general rule, the facts ought to have been stated.

The reference was made in consequence of the conflicting decisions in the cases of Hills *versus* Ishur Ghose, No. 1607 of 1862, decided on the 2nd September 1863.

Haran Mohun Mukerjee *versus* Thakoor Dass Mundel and others, decided 14th September 1864, reported in the Weekly Reporter, Vol. I, page 112.

Shibnaram Ghose *versus* Kashee Pershad Mookerjee and others, decided 26th November 1864, reported in the Weekly Reporter, Vol. I., page 226.

The papers were sent to the Officiating Chief Justice, and were handed to me upon my return from England; and considering the importance of the case, not as regards the amount in suit, but with reference to the principle to be established, and the necessity of having a decision by which the Judges would consider themselves bound, I thought it right to request the attendance of all the Judges of the Court, and to have the case decided by them.

The case has been very elaborately argued by Counsel upon both sides; but I cannot say that anything of importance has been brought forward which had not been previously considered in the arguments and in the judgments pronounced in Ishur Ghose's case, and in the Minutes of the Judges written in consequence of that decision. I must confess that I have not heard or read anything since Ishur Ghose's case was decided, which has induced me to alter the opinions which I then expressed; and I should be wanting in sincerity if, out of deference to my learned Colleagues, or for the sake of using expressions of courtesy, I were to say that anything which I have heard to-day has led me to entertain the slightest doubt as to the correctness of my former opinion. To that opinion I firmly adhere.

In that case it was held by Mr. Justice Bayley, Mr. Justice Kemp, and myself that the enhanced rent could not exceed the old rent with such portion of the increase added to it as would render it fair and equitable under the altered state of circumstances; and it was expressly stated that, in determining whether the whole of the increase was to be added, the Judge must be guided by all the circumstances of the case. It was said—"In the absence of proof to the contrary, he may take the old rent as a fair and equitable rent—with reference to the former value of produce, he must take into consideration the circumstances under which the value of the produce has increased, and whether those circumstances are likely to continue, and whether the value of the produce is likely to keep up to the present average in the ensuing year. *He must consider whether the costs of production, including fair and reasonable wages for labour and the ordinary rate of profits derived from agriculture in the neighbourhood, have increased, and he must make a fair allowance on that account.*"

The decision in that case, whether right or wrong, was not a hasty one. The Judges before whom it was heard were fully aware of the importance of the judgment they were called upon to pronounce, and of the numerous cases which would be governed by the principle to be laid down. They, therefore, took time to consider, and the judgment was not pronounced until they had given their utmost consideration to the case, and had expended much time in endeavouring to arrive at a just and sound conclusion which might govern other cases then pending, and might form a precedent for future cases. The principle of that decision was that the ryot was entitled to the full benefit of the old rent, and that it could not be enhanced beyond the amount warranted by the ground of enhancement. Rules were laid down for the guidance of the Judges in determining the facts, such as "rent which new ryots would pay," and the definition of rent by Malthus, merely as a guide to the Judge, some rule being necessary to ascertain what was the actual value or rack-rent, in case there should be no evidence of market value. In fact, the Judge stated expressly that there was no evidence of market value.

The case of the Queen *vs.* the Grand Junction Railway Company, 4 Queen's Bench Reports, p. 18, has been referred to. In that case the Court held that in ascertaining for rating purposes the rent at which the Railway might be reasonably expected to let to a tenant from year to year, the only deduction from gross receipts on account of tenant's profits was a percentage on the capital employed. This deduction was in the particular case calculated at 20 per cent., having regard to the fair profits of such a trade carried on by means of so large a capital and with such large risks.

This percentage was allowed in addition to 5 per cent. interest on the capital and all other expenses of carrying on the business of carriers.

It appears to me that the deductions which were made in Ishur Ghose's case were quite in accordance with the principle of that case, for under the definition of Malthus, not only interest, but profits on capital were allowed in addition to every expense of cultivation.

As my opinion is in the minority, and, I may say, stands alone, I feel right to point out more at large the reasons which still influence my mind, and prevent me from yielding my opinion to those of the other Judges of the Court.

In the judgment given in review in Ishur Ghose's case, I showed—

1st.—That the zemindars were, in 1793, declared to be the proprietors of the lands, and encouraged to exert themselves in the cultivation and improvement of their estates, under the

certainty that they would enjoy exclusively the fruits of their own good management and industry, and that no demand would ever be made upon them for an augmentation of the public assessment in consequence of the improvement of their respective estates.

2nd.—That from 1793 to 1812 they were prevented from granting pottahs or leases to ryots for terms exceeding 10 years; and consequently could not, during that period, have created ryots with hereditary rights of property in the soil.

3rd.—That after Regulation V. of 1812 they were entitled to grant leases to all new ryots and to all ryots who were not entitled to demand a renewal of their leases, such as khoodkasht ryots, *at any rent* and for any term that might specifically be agreed upon between them; and that such leases, whether in perpetuity or for any term, were binding upon the zemindars and their heirs or assigns; and that the Courts were to give effect to the definite clauses of the engagements, *and to enforce payment of the sums specifically agreed upon.*

4th.—That if the ryot's original holding commenced after the date of the Permanent Settlement (and that if it commenced before, it was for him to prove it either by positive or presumptive evidence), he was entitled to have effect given to any definite engagement between him and the land-owner, either as to the duration of the term, if any was specifically granted to him, or as to the amount of rent to be paid, or the rates at which it was to be assessed. But that if he failed to prove that any such engagement was entered into, or that the term for which he was to hold was ever fixed or defined, or that any stipulation was made as to the rate of rent at which he was to hold, he must be considered to have entered and held as a tenant for one year only, and to have continued to hold on with the consent of the land-owner from year to year, or, according to the language more generally used in this country, as a tenant-at-will; and that, but for Act X. of 1859, he would have been liable to have his tenancy determined by the land-owner, and to be turned out of possession at the end of any agricultural year. It was stated that it was unnecessary to determine whether, according to the law of this country, any notice to quit would have been necessary or not.

If by custom or usage a notice to quit was necessary, the ryot would of course be entitled to it before his holding could be determined.

After Regulation V. of 1812, a land-owner had as much power to fix his own rents and terms as regards all new ryots and others, except the khoodkasht ryots and such others of the old ryots as were entitled to a renewal of their leases, as any land-owner in England.

It has been observed in a book of very considerable authority on those subjects—I mean Directions for Revenue Officers in the North-Western Provinces, promulgated by the Lieutenant-Governor, and prepared, I believe, originally by the late Mr. Thomason, p. 31, para. 121, that—

"Much confusion has arisen from the neglect to distinguish between proprietary and non-proprietary cultivators,"—and it is there stated (paras. 121 to 128) that, "throughout Hindoostan there is a large body of persons possessing an heritable and transferable property in the soil, who are also cultivators, and their profits, as proprietors and as cultivators are sometimes so mixed together that it is difficult to distinguish between them and the non-proprietary cultivators.

"In many parts of Bengal, Behar, and Orissa, at the time of the Permanent Settlement, no attempt was made to distinguish proprietary from non-proprietary cultivators, but all were left indiscriminately to the mercy of superiors who contracted for the Government revenue and who, whatever was their origin, were distinct from the village proprietors. A similar error was nearly committed in the talookdaree estates in the North-Western Provinces.

"A remedy for this manifest injustice has been often sought by an attempt to provide protection equally for all classes of cultivators, and the advocates of such measures have argued upon acts which in truth indicated the existence of much higher rights than those of mere cultivators.

"The importance of the question is much diminished when the proprietary have been carefully separated from the non-proprietary cultivators, and the former confirmed in all the privileges to which they are justly entitled.

"Still it is incumbent upon the Settlement Officer to define precisely the position of non-proprietary cultivators, *in order that no doubt may remain as to the party entitled to benefit by future improvement of the land.* So long as this is doubtful, exertion will be discouraged.

'Non-proprietary cultivators are generally either the descendants of former dispossessed proprietors, *or they have been located on the estate by the present proprietors, or their prodecessors. Their best security no doubt consists in the demand for their labor. A zemindar commonly reckons his wealth by the numbers of his Assamees, and the fear of losing their services is often a sufficient provision against harshness or severity towards them.*

"*There can, however, be no doubt that many non-proprietary cultivators are considered to*

have rights of occupancy, and thus two classes are commonly recognized—*those who are entitled to hold at fixed rates, and those who are mere tenants-at-will.*

"Cultivators *at fixed rates* have a right to hold certain fields, and cannot be ejected from them so long as they pay those rates. They have no right of property in the fields, and are not able to alienate them without the consent of the proprietors; but their sons, or their immediate heirs residing with them in the village, would succeed on the same terms as themselves: nor are they competent of themselves to perform any act which is considered to indicate proprietary right, such as the digging of a well, the planting of a garden, or the location of a laborer. Their simple right is to till their fields themselves, or to provide for the tillage, *and for these fields they pay certain rates*, and are in some cases liable to be called upon to perform certain services, or to pay certain fees to the proprietors. *So long as these conditions are fulfilled, they cannot be ejected from their fields;* and if an attempt is made to eject them, they have their remedy by summary suit before the Collectors. If they fail to pay the rent legally demandable, the proprietor must sue them summarily for the arrear, and on obtaining a decree in his favor and failing after it to collect his dues, he may apply to the Collector to eject them and to give him possession of the land.

"Tenants-at-will have no right extending beyond the year of their cultivation. When at the commencement of the agricultural year they agree to cultivate certain fields on certain terms, they are entitled to the occupation of those fields on the specified terms during the year; but at its close their right terminates."

I do not believe that, even before the Permanent Settlement, every cultivator who resided in the village in which his lands were situate, whether let into possession for a term or only as a tenant-at-will or to hold from year to year, necessarily became a khoodkasht ryot.

The definition of khoodkasht in Wilson's Glossary (287) is, a "cultivator of his own hereditary land." The word "khood" self or own, and "kasht" to sow, show that the term has reference to some proprietary rights, rather than to the fact of residence in the village. In column 267 of the same Glossary, Tit-khoodkasht, the definition is, "a resident cultivator, one cultivating *his own hereditary lands*, either under a zemindar or a co-parcener in a village." In Bengal one class of them holding their lands *at fixed rates by hereditary right*, sometimes sub-let them, except the part about their dwelling in which they continue to reside; and although *ceasing to cultivate and engaged in trade or business*, they retain their designation of khoodkasht. The term is also applied in the North-Western Provinces to lands which the proprietor, or the payer of the Government revenue, cultivates himself.

A khoodkasht ryot probably derived his title by descent from or succession to one of the old village community or some person who in ancient times had acquired a proprietary right in the land under the old Hindu or Mahomedan law by reason of his having reclaimed it. Menu says, "Sages pronounce cultivated land to be the property of him who cut away the wood or who cleared and tilled it" (Chap. 9, para. 44). So property in waste land was, according to Mahomedan law, established by reclaiming it with the permission of the Imam according to Aboo Huneefa, and by the mere act of reclaiming it according to Aboo Yusuf and Mahomed. (*See* Baillie on the Land Tax of India, Chap. 6, para. 42). But however this may be, it is clear that since Regulation II. of 1793, by which the right of property was declared to be vested in the land-holders, *i. e.*, in the zemindars and independent Talookdars, property in land which formed part of a permanently-settled estate could not be acquired by reclaiming it from waste. How then could it be acquired except by contract or adverse possession, or by prescription going back as far as to the time of the Permanent Settlement? I am of opinion that neither a right of proprietorship nor a right of occupancy could have been acquired by any other means in a permanently-settled estate.

The Directions to Revenue Officers, paragraph 130, show that the right depends upon prescription. It is there said—"It is impossible to lay down any fixed rule, defining what classes of cultivators are to be considered entitled to hold at *fixed* rates. They are known in different parts of the country by different names, as chupperbund, *khoodkasht*, *kudeemee*, mourosee, hukdar, &c., all of which terms imply attachment to the soil *or prescriptive right*. Those who have no such right are commonly called kutcha Assamees or pykasht. *It has sometimes been supposed that all ryots resident in the village (khood kasht) are of the former class, and that those who reside in another village (pykasht) have no rights. But there are frequent exceptions to this rule. Many cultivators residing in the village are mere tenants-at-will, whilst those residing in neighbouring villages may have marked and recognized rights. Prescription is the best rule to follow.*"

I am clearly of opinion that a ryot who, after the date of the Permanent Settlement, and especially after Regulation V. of 1812, was let into possession by a zemindar to hold as tenant for a fixed term, or at will, or from year to year, or without defining the period during which

his tenancy was to continue, did not, before Act X. of 1859, merely by reason of an occupation for 12 years, become a khoodkasht ryot. But it is not necessary to determine this point, because Section 6 of Act X. of 1859 makes no distinction between a khoodkasht and a pykasht ryot. Each, if he has occupied for 12 years, has had a right of occupancy conferred upon him by that Act, which is hereafter shown to have had a retrospective effect.

It was suggested that the 6th Section substantially converted every ryot who had occupied for 12 years into a khoodkasht ryot, and give him a right to hold at fixed or customary rates. But there is nothing in the Act which, in my opinion, discloses any such intention.

In my former judgment in review in Ishur Ghose's case, I showed that, prior to Act X. of 1859, even a right of occupancy could not be gained merely by an occupation for 12 years. I there reviewed the authorities of the late Sudder Court upon the subject, and I referred to the case of Degumber Mitter and Ramsoonder Mitter, Sudder Decisions, 1856, page 617, in which, at page 624, it was held that the failure or forbearance of the zemindar to demand an increase of rent during 12 years did not create a right of occupancy.

A similar decision was come to in the case of Mussamut Lalahoonissa Khatoon *versus* Ram Gopal Sein, same volume, page 665.

I have not heard the authority of either of those cases impugned, nor has it been contended that, before Act X. of 1859, a mere occupation for 12 years conferred a right of occupancy, or a right to hold at less than the actual value of the land.

The Civil Law, in which it has been said "that we have the most complete, if not the only, collection of the rules of natural reason and equity* which are to govern the actions of mankind," and which has been called "*ratio scripta*," as containing the most perfect rules of reason for deciding all differences between man and man, held that a farmer or tenant could not acquire by prescription what he held by that title; "for, in order to prescribe, it is necessary to possess and to possess as master."† But where a ryot or tenant holds at a certain rent with the consent of his landlord, there is no adverse holding at that rent. If a ryot could prove that he had held land for many years, and that whenever his rent was altered, he had claimed to hold at a fixed rent, or at a rent assessable according to some definite rules, and that such claim had been acquiesced in by the land-owner, he would have evidence from which a prescriptive right to hold at that rent might be presumed; but a mere occupation of land for 12 years at a fixed rent, or at rent which had been varied at the pleasure or caprice of the land-owner, would be no evidence of such a right. That was expressly laid down by the late Sudder Court in the case, to which I have above referred, of Degumber Mitter *versus* Ramsoonder Mitter, Sudder Decisions, July 1856, page 617; and that decision was quite in accordance with the rule of the Civil Law.

* Dr. Strahan Int., page 5.

† Domat, 2227.

In that case four Judges (Mr. Raikes, Mr. Colvin, Mr. Patton, and Mr. Trevor), reversing the decision of the lower Appellate Court, held that the landlord *was entitled to enhance his rent to the full actual value of the land* at which it had been assessed by the first Court. They said—"It has been shown by Baboo Ramapersaud Roy in the precedents of the Court referred to in his argument, how the current of decisions have run on this question since 1845, and that this Court has on several occasions, under different forms of words, almost invariably ruled that 'the claim to assess, being a perpetually recurring cause of action, cannot be barred by lapse of time.' We would also refer to another case (not cited) at page 188 of the printed Decisions for 1849—Dupnarain Roy, appellant, *versus* Sreemuttee Roy and others— as a case in point. The suit there was for re-adjustment of rent by a ryot, on the ground of excessive rates, the zemindar pleading payment of the rates objected to by the ryot for upwards of 20 years. A special appeal was admitted, to try whether lapse of time was not a fair and legitimate plea against the action, and the ruling therein was that, as the zemindar had produced no engagement binding the ryot to any particular amount of jumma, or as being in possession of any particular mehal of known boundaries, on which rent is payable without reference to what may be found, at any period, to be its exact extent by correct measurement, the ryot is not barred by having paid an uniform rent for more than 12 years, from claiming a measurement and re-adjustment of the rent in the same manner as a zemindar, when not bound by express engagement, has *always a claim to* a like measurement.

"These precedents must be held to establish the principle that, unless the landlord and tenant are bound by express engagement to a uniform rate of rent, the right to raise or reduce it, however dependent on other circumstances which may govern each particular case, is a right that cannot be disputed on the plea of lapse of time, nor be extinguished by prescription.

"The appellant's pleader has also proved by the submission of competent authorities on the subject, that under the English Statutes the law of limitation and prescription was held not to

apply to suits of the nature before us. *The reasoning on this seems to be that, as the tenant's possession is from the first a possession with the consent of the landlord, it must be considered as permissive, however long it may continue, and that no length of time can therefore bar the landlord's right of recovery, or secure to the tenant a title adverse to the landlord's interests.*

"*The connection between landlord and tenant, in this country, commences on a similar understanding.* The under-tenant in Bengal, whether holding by pottah or as a tenant-at-will, *occupies his land with the consent of the zemindar,* and the rent, however determinable, is only a consequence of the arrangement. Should the zemindar content himself with less *than the local rates in the case of a tenant-at-will, the law only imposes upon the zemindar the necessity of serving such tenant with a notice before he can legally raise them;* but the precedents of this Court, cited above, clearly indicate *that the construction put upon the law here as well as in England is the same,* and that the failure or forbearance of the zemindar to demand an increase of rent during 12 years, will not change a tenant-at-will into a tenant with permanent rights of occupancy.

"It has been argued by Baboo Shumbhoonath Pundit, on the part of the ryot, that the landlord's receipt of rent at a uniform rate during more than 12 years is evidence of his having abandoned his right to demand more, and prevents the exercise of the right ever after. *But the payment of the same rent for a considerable time by a tenant cannot be proof of the landlord's intention to restrict his own right of demand; it is far too ambiguous a fact to allow of any such conclusion being drawn in favor of the tenant.* It is, moreover, an argument practically inconsistent with any application of the limitation law. If that law, as assumed, barred the *right* of the landlord to re-assess the lands for ever, he could not exercise that right in the event of the lands being abandoned by the present occupant, the application of the law would not only affect his right over the present tenant, but would apparently fix the rent of the land at the present rates for ever.

"The Court therefore see no reason whatever to depart from the principle inculcated by the precedents, which hold that the law of limitation is inapplicable to suits for the adjustment of rents."

Mr. Torrens, who dissented, said—"If a zemindar 'neglects all the requisitions of the law, which under his settlement he is bound by, he cannot come into Court and reap an advantage from his own laches, saying that any time whatever, without respect to any general law of limitation, 'I have a right to be heard in question of my ryot's tenure, and to enhance at my discretion the assessment payable on it. *It is true that I have not fulfilled any of the requirements of the law by settling with my ryots, or by giving the documents required of me to the Collector: it is true, too, that my ryot has asserted his right to hold at fixed rates for these last 30 years; that I have not before questioned this; but now that he has laid out all his capital under the security relied on from my silence, and from my receiving from him only at the rate given in my zemindaree accounts, I wish to raise his assessment tenfold, and if he cannot pay, eject him.' This state of things was, I apprehend, never intended by the Decennial Settlement but such would be the consequence, especially since the enactment of Act I. of 1845, if the law of limitation cannot be held applicable to suits of this nature.*"

I should concur with Mr. Torrens, if it had been proved, as he alleged, that the ryot had asserted his right to hold at fixed rates for 30 years, and the land-owner had acquiesced in the claim; but that statement was used rather as an argument than as referring to the facts which had been proved in the particular case before the Court.

The case was determined with reference to a purchaser under Act I. of 1845, but it must be equally applicable to any other land-owner who let a ryot into possession under such terms that he was not precluded from raising his rent.

If, after Regulation V. of 1812, a land-owner let lands to a ryot at a certain rent without any agreement fixing the term of the holding or binding the land-owner not to enhance the rent, or if he should enhance it, to enhance it only according to certain fixed rules, the ryot would not have held at Pergunnah rates, or at customary rates, or at rates payable by similar ryots for similar lands in the neighbourhood; and the principle of the above case would show that a holding for 12 or 20 years would not have created a right to hold at such rates, and that the land-owner even after a holding for 12 or 20 years would not, before Act X. of 1859, have been precluded, after notice, from enhancing the rent to the full actual value of the land, or of ejecting the ryot if he would not consent to pay it.

What presumption, then, is to be made merely from the fact of a holding for 12 or 20 years not carried back prior to 1812, or to the date of the Permanent Settlement?

Act X. of 1859 created a right of occupancy in all ryots who had occupied for 12 years, without reference to the fact whether they resided in the village or not. The Act applied to all ryots who had occupied for 12 years, and who were then merely tenants-at-will liable to be

emoved at the end of any current year, if not without, at least after, a notice to quit, and to have their rents enhanced after notice of enhancement, to the full actual value of the lands. But was it the intention of the Legislature, when conferring such rights by retrospective operation, to derogate from the proprietary rights which were declared at the time of the Permanent Settlement, to belong to the land-owners, and to confer on those who were merely tenants-at-will, or tenants from year to year, not only a right not to be removed from their holdings, but also a right to hold at fixed rates or lower rents than other ryots would pay for the same land?

As I said in my former judgment, to hold that the Legislature intended to confer rights of occupancy which did not previously exist at rents lower than such as could be reasonably obtained from new ryots, would, in my opinion, be giving a construction to the Act which would render it an unjust interference with the vested rights of the land-owners in the permanently-settled districts, and a violation of the engagement which at the time of the Permanent Settlement was made with them by Government.

Such a construction cannot be put upon the Act, unless the Legislature has declared its intention by the clearest and most unmistakeable language. I cannot think that the Legislature, by using the words "fair and equitable rates," intended to give a ryot who obtained possession only 12 years ago when he had no right to the land and when the zemindar was not even bound to accept him as a ryot, or to admit him into possession, any proprietary rights which would entitle him without express contract, to participate in any increase in the value of the produce of the land not caused by his own agency or at his expense.

Surely it could not have been necessary, in order to protect the ryots from unwarrantable exaction, to enact that a ryot who had no right in the land 13 years ago, should, by reason of his having occupied it for 12 years, become entitled to hold it at a less rent than a new ryot would give for it.

It would surprise land-owners in England if they were to find that, by an Act having retrospective effect, or by a construction put upon the words "fair and equitable," tenants who had held under leases for 99 years at a nominal rent, or had held for 20 years as tenants from year to year at very low rents, had acquired rights of occupancy, and that at the expiration of the leases, or upon the determination of the tenancies, they were not merely not bound to quit, but were entitled to hold on a lower rate than the land-owners could obtain from new tenants.

Mr. Justice Campbell has referred to the report of the Select Committee as a legitimate guide for ascertaining the reasons of the Legislature for conferring a right of occupancy upon ryots who had held for 12 years. If he would refer to the proceedings of the Legislative Council for 1859, on the motion of Mr. Ricketts, at page 222, he would find equally legitimate evidence that it was not in fact the intention of the Legislature, when using the words "fair and equitable," to render the pergunnah rates, or customary rates, or the rates payable by similar ryots for similar lands in the neighbourhood, the standard for determining what would be fair and equitalbe.

The pergunnah rates were in all probability originally intended for the purpose of enabling the Government in assessing the revenue to ascertain what the land-owners were in fact collecting from the ryots, not that the Government was bound in assessing the lands to treat the rents actually collected as the true value. It was the interest of the zemindars to show that the rents they were collecting were very low, and to make them up by abwab and cesses. In practice the pergunnah rates were seldom found to exist.

If it had been the intention of the Legislature that all ryots upon whom a right of occupancy had been conferred, should be entitled to hold at pergunnah rates, or customary rates, or, in the absence of such rates, according to a rule of proportion, nothing would have been easier than to have added words to that effect. But they simply declared, by Section 5, that tenants having rights of occupancy were entitled to receive pottahs at fair and equitable rates, which, as I construe that section, also includes a right *to hold* at fair and equitable rates, leaving it to the Courts of Judicature to fix what would be fair and equitable in each case. It could not have been left to the land-owner to fix his own rent, without enabling him to frustrate the intention to give a right of occupancy; for, if he could fix his own rent, he could easily compel the ryot to abandon his holding. There is nothing in the words "fair and equitable" which necessitates injustice to the land-owners, or such a construction to be put upon the Act as to render it a violation of the engagement made with the zemindars at the time of the Permanent Settlement. What is just and equitable in each case is left to the Courts, and was intended to be left to them.

The right of occupancy acquired by reason of an occupation for 12 years is the mere creation of Act X. That Act, as I have already observed, did not take away the right of any ryot who had a right by grant, contract, prescription, or other valid title to hold at a fixed

rate of rent. The rights of those who have held at fixed rates of rents which have not been changed from the time of the Permanent Settlement, are expressly protected by Section 3, and Section 4 has given them a more easy mode of proving those rights.

By the term "fixed rates of rent," I understand not merely fixed and definite sums payable as rent, but also rates regulated by certain fixed principles—such, for instance, as a certain proportion of the gross or of the net produce of every beegah, or such a sum of money as would be equal to such a proportion of the produce, or such a sum as would give to the ryot any fixed rate of profit after payment of all expenses of cultivation. "*Id certum est quod certum reddi potest*" is a maxim of law. But if I am wrong in this construction, I think the ryot who could prove such a right would be entitled to the benefit of it in determining what would be a fair and equitable rent for such ryot to pay; what is fair and equitable for one is not necessarily fair and equitable for another. What is fair and equitable for an old ryot who has a prescriptive right to a certain proportion of net or gross produce, is not necessarily fair and equitable for the modern ryot or for one who has occupied for a period of 12 years only at the same rent at which he was let in, or at a rent from time to time enhanced or diminished by agreement without reference to any fixed principles.

When conferring rights of occupancy upon all ryots who had occupied for 12 years, the Legislature distinguished between those who had a right to hold at fixed rates and those who had not. The former were provided for by Sections 3 and 4; the others were to pay such rent as might be fair and equitable.

Holdings at fixed rates from the time of the Permanent Settlement were, by Section 3, substantially treated as prescriptive holdings, giving a right to hold at fixed rates; and Section 4 was passed in order to give the ryot a more easy mode of proving such a holding. The date fixed from which prescriptive rights were to be presumed was the time of the Permanent Settlement,—a time prior to that at which zemindars were declared to be the proprietors of the lands and were authorized to fix their own rents and terms and to deal with the land as any other landed proprietors.

This they were authorized to do by Regulation V. of 1812, and the retrospective effect given to it by Section 2, Regulation VIII. of 1819.

Although the Legislature left those who had no prescriptive right or rights to hold at fixed rates, liable to pay fair and equitable rates, a limit was put to the grounds of enhancement by Section 17.

One ground of enhancement, is that the rate of rent paid by the ryots is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the places adjacent.

But that is not the only ground. The second ground is, that the value of the produce or productive powers of the land have been increased otherwise than by the agency or at the expense of the ryot.

It certainly could not have been the intention of the Legislature when they authorized an enhancement upon the ground of an increase in the value of the produce, or of the productive powers of the land, to limit that ground of enhancement, and to declare that the enhanced rate should not exceed the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the places adjacent.

There could be no good reason for allowing the second ground if it was to be limited by the first; and if such a rule were adopted, there would be no mode of enhancing the rents, if they should all be too low.

The first question, in the mode in which it is put, seems to imply that the learned Judges who propounded it considered that the fair and equitable rate to be awarded must either be the rate which could be obtained by commercial competition in the market, or the rate to be determined by the custom of the neighbourhood in regard to the same class of ryots. It seems to be only for want of such a customary rate, or in consequence of the rates, as it is said, not having adjusted themselves, that the rule of proportion is to be adopted.

But it has not been found in this case that there was a customary rate which has or has not adjusted itself. Suppose the usual rent was one Rupee per beegah for lands of a particular description. Is that rent always to continue, however much the land may improve in value? If not, by what rule is it to be increased? Is there any rule which lays down the standard which is to be applied in increasing it; and if not, is the Court to say that because there is no custom, or because the rents have not adjusted themselves according to a custom, we will create a new custom, and declare that the custom requires the rents to be increased, so that the landlord's rent may always bear the same proportion to the present gross produce as the old rent did to the old gross produce?

If the rule of proportion was not the custom, how does the right, even if it exists, to hold

at customary rates, entitle the ryot to have that standard applied; is it to be applied as *a principle of natural justice and equity* independent of any custom to warrant it?

In the judgments by which the questions were submitted to a Full Bench in this case, Mr. Justice Campbell and Mr. Justice E. Jackson say that the enhancement should be awarded in proportion to the increase of the value of the *net produce* of the land.

Mr. Justice E. Jackson says—"I agree with Mr. Justice Campbell that the enhancement should be awarded in proportion to the increase of the value of the *net* profits of the land. By this mode of enhancement, the original agreement between the ryot and the zemindar is retained, and both continue to share in the increased *net* value of produce in the same proportion in which they agreed to share in the net value of produce as it existed when the agreement was originally made. No sufficient ground is shown by either side to disturb that original agreement."

There was no finding by the lower Court of any such agreement, and no evidence whatever to prove that any such agreement ever existed, or from which any such agreement could be legally presumed. The mere fact that the rent originally fixed bore a certain proportion to the value of the net produce (which could not be ascertained at the time when the rent was fixed) is no more evidence, either actual or presumptive, of an agreement that that proportion should always continue to exist, than the fact that a certain amount of rent was fixed is evidence of an agreement that the same amount of rent should always continue. There is no more evidence of an agreement that the proportion should always remain the same than there is of an agreement that the amount should always remain the same. But if there was an agreement that the rent should always bear a certain proportion to the value of the *net* produce, why is the rent to be fixed in proportion to the value of the *gross* produce?

It has been contended that Section 17, Act X. of 1859, extends only to cases of suits for enhancement, and not to cases in which the ryot asks for a pottah, or the land-owner demands a kubooleut at an enhanced rent.

This view has been apparently adopted by some, but I cannot concur in it.

The Act says that, in the case of a ryot having a right of occupancy, the rent paid shall be deemed to be fair and equitable (Section 5). But the 17th section says,—"No ryot having a right of occupancy shall be liable to an enhancement of the rent previously paid by him, except on some one of the following grounds."

When a right of occupancy exists, it appears to me that the rent previously paid cannot be ehnanced, except for one of the grounds mentioned in Section 17, whether in a suit for enhancement or in a suit for a kubooleut, or for the recovery of arrears at enhanced rates. The form of the procedure adopted by the land-owner to obtain a higher rent than that previously paid, cannot alter his right. If it would, land-owners would only have to sue for kubooleut at increased rents, instead of giving notice to enhance and suing for enhancement or for the recovery of arrears of the enhanced rent.

According to Ishur Ghose's case, the enhanced rate cannot exceed the old rent with such additions as the grounds of enhancement warrant. It is to be the old rent with something added to it. Whatever net profit the tenant derived from holding at that rent, he must, according to the decision in that case, retain after the rent has been enhanced upon the ground of the increased value of produce. If his rent were Rs. 10 or 20 lower than a rack-rent of the land under the circumstances existing at the time when it was fixed, and consequently giving him a net profit to that extent beyond the whole expenses of production, he must continue, after enhancement, to enjoy the full benefit conferred upon him when his rent was fixed, and the enhanced rent must to the same extent be lower than what would be a rack-rent of the premises, having regard to the increased value of the produce; for it is expressly laid down that the enhanced rent cannot exceed the old rent with such portion of the increased value added to it as will render it fair and equitable, and that, in fixing the amount, *the Judge must consider whether the costs of production including fair and reasonable wages for labour and the ordinary rate of profits derived from agriculture in the neighbourhood, have increased, and if so, that he must make a fair allowance on that account.* In other words, all increased costs of production, including wages and agricultural profits, must be deducted from the increased value of produce before any part of the increase can be added to the old rent. It is only the net, and not the gross, increase, or such part of the net increase as will render the rent fair and equitable, that can be added to it. If the market value of the land should exceed the amount of the old rent, with the whole of the net increase added to it, the land-owner would not be entitled to the full market value, but must make such a deduction as will leave the tenant the benefit of the full amount of profit which he derived from the old rent at the old value of produce; that is to say, the new rent must be as much lower than a full rack-rent of the land after the increase, as the old rent was lower than a full rack-rent before the increase. To

give the tenant more than this without the land-owner's consent, would be injustice to the land-owners, and consequently cannot be fair and equitable.

It cannot be doubted that Act X. did to some extent encroach upon the rights of the land-owner when it created a new right of occupancy even at a fair and equitable rent, and limited the right to enhance to particular grounds, for it deprived the land-owner of his right to turn out those ryots who under the old law were tenants-at-will, if they would not come to terms, or if the land-owner for any cause required to have his land again. But the words of the Act are clear, that the rent cannot be enhanced except upon certain grounds specified in Section 17, and the Courts are bound not to enhance the rent beyond the amount which those grounds warrant.

Let us see how the case would stand according to the rule in Ishur Ghose's case.

Suppose a ryot held land for 12 years at Rs. 100 rent,— that the gross value of produce when the rent was fixed was Rs. 300, and all the costs of production, including labor, interest, and profit on capital (which in Ishur Ghose's case was said to be included in costs of production) amounted to Rs. 100. The case would stand thus:—

	Rs.
Value of produce	300
Costs of production	100
Net value	200
Rent	100
Ryot's net profit	100

In that case the tenant would get Rs. 100 net profit after paying all the costs of production, including profit on capital and wages, whether his own or those of hired labourers.

The ratio of rent to net value was $\frac{100}{200}$ or $\frac{1}{2}$. The ratio of tenant's net profit to net value is the same $\frac{100}{200}$ or $\frac{1}{2}$.

Suppose the value of produce should be doubled, and the costs of production doubled—

	Rs.
The value of produce would be	600
Costs of production	200
Net value	400
Ryot's net profit as before	100
Leaving for rent	300

If the owner's rent were increased to Rs. 300, it would not bear the same proportion to the present gross value (600) as the former rent (100) did to the former gross value (300), or the same proportion to the net value of produce (400) as the old rent (100) did to the former net value (200). It would be one-half instead of one-third of the value of gross produce, and three-fourths instead of one-half of the net value of produce, yet the ryot would still have the same amount of net profit as before.

Unless the ryot is made a co-proprietor by Act X. of 1859, there is no reason why his net profit should exceed that which he derived from his former rent under the old circumstances, and the land-owner be debarred of his right to let the land for 300, if he could procure that amount by competition from ryots who would be satisfied with a clear net profit of 100 over and above all expenses of production. If the ryot is not contented with the same amount of profit as he made before the rise in prices, he is not bound to remain. He can give up his holding. His right of occupancy does not bind him to remain. It only binds the land-owner not to turn him out. Whether it would be the interest of the land-owner not to allow the ryot some addition to his former net profit, is another matter. In this respect the demand for labor and the necessity of giving the ryot some interest to exert himself would be the ryot's security for liberal treatment by the land-owner. The land-owner is not bound to allow his ryot to have a net profit of Rs. 200 out of Rs. 400, because, in fixing the rent in the first instance, he allowed him to hold at such a rent as in fact gave him a net profit of Rs. 100 out of Rs. 200. The two cases are very different. If the ryot could show that, by reason of a stipulation in the contract, or by prescription, he was entitled to have a particular share of the net or gross produce, the case would of course be different. But the mere fact of his rent having been fixed originally at Rs. 100 lower than the rack-rent, or at such an amount as did in fact give him a net profit of Rs. 100, or out of a gross value of Rs. 300 out of a net value of Rs. 200, does not show that the land-owner was bound, either by prescription, or contract, or custom, to adjust the rent for ever at such a rate as would give him a net profit of one-third

of the gross, or one-half of the net produce, whatever might be the amount. It might with as much reason be said that the ryot was always entitled to hold at Rs. 100 rent whatever might become the value of the land, because, when the rent was first fixed, he was allowed to hold at Rs. 100. If all the ryots in the district had had their rents adjusted, so as to give them a net profit of Rs. 100 out of Rs. 200, it would not create a custom or a right for them all to have a net profit of Rs. 200 if the value of net produce should increase to Rs. 400.

Every one knows that a business which gives very large gross returns is generally more valuable in proportion than one which gives smaller returns. The copyright of a book of which 10,000 copies are struck off and sold at the first issue, would *ceteris paribus* generally be worth more than ten times as much as one of which only 1,000 copies are struck off and issued. The reason is that the one gives larger net profits than the other. The author would not probably sell the copyright of the two books at prices bearing the same proportion to the number of copies issued, nor pay a publisher for publishing and printing the works the same proportion of the gross proceeds of the sale of the 10,000 copies as he would of the 1,000. Why, then, should a land-owner be legally bound to allow a ryot to hold at a rent which, under the altered circumstances, would yield a net profit of Rs. 200 out of a net value of Rs. 400, because he once allowed him to hold the same land at a rent which gave him a net profit of Rs. 100 out of a net value of Rs. 200? There is nothing in the Act which declares that he is so bound; and if he is not declared to be so, it is only by the Court's construction of what is fair and equitable that he becomes so bound. I confess that I cannot see the equity, or justice, or fairness of such a decision.

Having shown that the rule in Ishur Ghose's case secured the tenant as large a net profit under the altered circumstances as he derives from the old rent at the time when it was originally fixed, I will now consider the equity and justice of the rule of proportion.

It is said that the rent to be fixed must bear the same proportion to the present gross value of produce as the old rent did to the former gross value of produce.

Suppose it should be proved that an agricultural laborer, without any capital or property, 14 years before the passing of Act X. of 1859, applied to a zemindar to allow him to enter upon lands which had been abandoned or deserted by a former ryot who had held as tenant-at-will, —that the zemindar consented,—that the parties agreed upon a rent, say Rs. 100, without any stipulation or agreement as to the basis upon which the rent was fixed,—that the ryot entered and occupied from year to year, and continued in possession upwards of 12 years before Act X. and up to the present time,—that when the land was first let, the gross value of the produce was Rs. 300,—that all the expenses of cultivation, including labor, interest, and profit upon capital and every other incidental expense of production amounted to Rs. 100. Suppose it should be further proved that the value of the produce had increased from Rs. 300 to 900 and that the expenses of cultivation had been doubled. This is not an improbable supposition, for in the present case it was found that the former value of the produce was Rs. 4-8 per beegah, and the present value Rs. 15; the former expenses Re. 1-4, and the present expenses Rs. 3. The case would stand thus if the rule of proportion is to apply :—

Before Increase.

	Rs.
Former gross value of produce	300
Expenses of cultivation	100
Former net value of produce	200
Land-owner's rent	100
Net profit to ryot after paying all expenses of cultivation	100

After Increase.

Present value (300 trebled)	900
All expenses of cultivation (100 doubled)	200
Present net value of produce	700
Landlord's rent (100 trebled)	300
Ryot's clear profit	400

The ryot received out of gross produce 200; *viz.*, 100 for costs of production, and 100 for net profit.

The ratio of the ryot's clear profit to *gross* value was formerly . . . $\frac{100}{300}=\frac{1}{3}$

The ratio of ryot's net profit to *net* value was . . . . . $\frac{100}{200}=\frac{1}{2}$

The ratio of rent to net value . . . . . $\frac{100}{200}=\frac{1}{2}$

and the amount of rent and the amount of ryot's net profit were equal.

But under the altered circumstances, if the rent must bear the same proportion to the present gross value of produce, as the former rent did to the former gross value of produce, the ratio of ryot's net profit to *gross* value will be . . . . . $\frac{400}{900}=\frac{4}{9}$

Ratio of ryot's net profit to *net* value of produce . . . . . $\frac{400}{700}=\frac{4}{7}$

Ratio of rent to net value will be . . . . . $\frac{300}{700}=\frac{3}{7}$

and the ryot's net profit will exceed the landlord's rent by one-seventh of the net value.

Thus, whilst the ratio of the ryot's net profit to net value is increased from $\frac{1}{2}$ to $\frac{4}{7}$, the ratio of the land-owner's rent to net profit is reduced from $\frac{1}{2}$ to $\frac{3}{7}$, and the ryot, instead of having a net profit of Rs. 100, has now a net profit of Rs. 400, which is Rs. 100 more than the land-owner's rent.

Again, suppose that, in the course of the next 20 or 30 years, the present gross value of produce should be trebled, and the present costs of production doubled.

The case would stand thus:—

	Rs.
Gross produce (900 trebled)	2,700
Expenses of cultivation (200 doubled)	400
Net value of produce	2,300
Rent (300 trebled)	900
Net profit to ryot	1,400
Ratio of ryot's net profit to net value	$\frac{1400}{2300}=\frac{14}{23}$
Ratio of rent to net value	$\frac{900}{2300}=\frac{9}{23}$

and whilst the ratio of ryot's net profit to net value would be increased from $\frac{4}{7}$ to $\frac{1400}{2300}$ or $\frac{14}{23}$, the ratio of rent to net value would be further reduced from $\frac{3}{7}$ to $\frac{900}{2300}$ or $\frac{9}{23}$, and the ryot instead of having a net profit of Rs. 100 as at first, or of Rs. 400 after the first increase, would have a net profit of Rs. 1,400, whilst the landlord would have only Rs. 900 as rent.

But suppose the ryot, instead of continuing to hold and cultivate the lands, should have ceased to live in the village, and should have under-let them to another ryot who had held them for 12 years when Act X. of 1859 came into operation.

The occupation of the under-ryot would not give him a right of occupancy as against the original ryot, for Section 6, Act X. of 1859 declares that the rule which gives a right of occupancy does not apply as respects the actual cultivator to lands sub-let for a term or year by year *by a ryot having a right of occupancy*. The first ryot could therefore turn out the under-ryot, and would thus be enabled to obtain a competition rate of rent, or the market value of the land.

In the case above supposed of the value of produce, Rs. 300, having trebled, and the expenses Rs. 200 doubled, it has been shown that the net value would be Rs. 700, the rent Rs. 300, and the net profit Rs. 400. If the first ryot should re-let the lands for Rs. 600, the under-ryot would make a net profit of Rs. 100, the same amount as was made by the first ryot when he first took the lands. In that case the first ryot would have a net rent of Rs. 300, for he would receive Rs. 600 as a competition rent from the under-ryot, and have to pay only Rs. 300 to the land-owner according to the rule of proportion. Thus, instead of being a mere agricultural laborer without capital or property, as he was when he first hired the land 14 years ago, he would become a *quasi* landed proprietor receiving from the under-ryot a net rent of Rs. 300 equal to the rent of the real land-owner.

If any rule of proportion is to be applied as a test of what is fair and equitable, which I deny, the rule that the ryot's net profit under the new circumstances shall bear the same proportion to the present net value of produce as the former net profit did to the former net value, would be more fair and equitable than the proposed rule of proportion. In that case the new rent would bear the same proportion to the present net value as the former rent did to the former net value.

If the revenue settlement had not been made permanent, the Government would, at the next settlement, after the increase in the value of produce, assuming that it was likely to be permanent, have increased the revenue assessment, and, under the old practice, would have taken two-thirds, or according to the practice now adopted in the North-Western Provinces, one-half of the net produce. (*See* Directions to Revenue Officers, page 3.) It is there said—"It is needless to enquire who, theoretically, is the owner of the soil. Undoubtedly, traces are often to be found of the existence and exercise of a proprietary right in the land on the part of the individuals. But so long as the Sovereign was entitled to a portion of the produce of land, and there was no fixed limit to that portion, practically the Soverign was so far the owner of the land as to be able to exclude all other persons from enjoying any portion of the

net produce. The first step, therefore, towards the creation of a private proprietary right in the land, was to place such a limit on the demand of the Government as would leave to the proprietors a profit which would constitute a valuable property. This is effected by providing that the assessment shall be a moderate portion, say two-thirds (now one-half) *of the net produce* at the time of settlement, and that the proprietor should be allowed all the benefits from improved or extended cultivation, which he may be able to obtain during the currency of his lease. This was further effected in most of the districts in the Lower Provinces, by making the settlement permanent and declaring the property in the soil to be vested in the land-holders."

If the settlement had not been made permanent, the Government revenue in the case supposed of the net value of produce being increased from Rs. 300 to 700, would, according to the rule of taking half the net produce, have been increased to 350, and the land-owner would have been entitled to receive from the ryot at least half as much again as the Government took from him, and would consequently have been entitled to Rs. 525, *i. e.*, 350 Government revenue, and one-half as much again, *viz.*, 175.

The rules which regulate the respective rights of the Government and the land-owners, where the settlement has not been made permanent, are shown in paragraphs 135 and 136 of Directions to Settlement Officers :—

" When the Government fixes its own demand upon an estate, *i. e.*, at the time of settlement, the Government officer is competent to fix the rates payable by the cultivator to the proprietor. He will be very careful not to do this arbitrarily, but he will refuse to admit the principle that, because a cultivator paid a low rent before the settlement, he is entitled to hold at the same rate, notwithstanding the Government demand has been re-adjusted. As a general rule, open to exceptions in special cases, the proprietors should be held entitled to raise the rent upon the cultivator till it *reach half as much again as the average* Government assessment upon land of the same quality.

" When the Government restricts its own demand upon the proprietors, it does not prohibit the proprietors from raising their terms upon the cultivators, in such amount as may be equitable during the period of the settlement. General circumstances affecting the whole pergunnah, such as the opening of new markets for the produce, the introduction of new articles of produce, *increased facilities* of irrigation, or a fall in the value of money, or circumstances having local effect in the village, such as the establishment of a gunj or haut, the new direction of a road, or the construction by the proprietors of some work for irrigation (and I may add the proximity of a Railway), may all render it equitable that the proprietor should demand an increased rent, though the Government jumma remain the same. The law has made provision for securing this right to the proprietors, fair opportunity having been afforded to the cultivators for contesting their demand."

The rules adopted in the North-Western Provinces, as described in the above paragraphs, are strictly in accordance with the ancient laws of the country, by which (as declared in the preambles of Regulations XIX. and XXXVII. of 1793) the ruling power was entitled to a certain proportion of the *produce* of every beegah of land, and with the established custom or usage by which (as declared in Section 7, Regulation I. of 1793) the Rulers have from time to time demanded an increase of the assessment from the proprietors of land, and for the purpose of obtaining this increase frequent investigations have been made to ascertain *the actual produce* of their estates.

The Government no doubt would generally take the rents received by the land-owners as the basis of the Revenue assessment, both in the Lower Provinces before the Permanent Settlement, and in the North-Western Provinces since Regulation IX. of 1833, Section 2 ; but if, when a new settlement is made, all the rents are too low in consequence of a considerable and permanent rise in prices, it would be necessary for the Collector to ascertain as nearly as possible what might fairly be expected to be the value of the net produce, and to assess the land in one-half the amount. " Net produce" is defined in the Directions to Revenue Officers, paragraph 52, to be " the surplus which the estate will yield after deducting the expenses of cultivation, including the profits of stock and wages of labor."

By the terms of the Permanent Settlement, Government pledged themselves to the zemindars that they were to have the full benefit of the assessments having been made permanent. To hold that the land-owners are not fairly and equitably entitled to receive from the ryots since the Permanent Settlement as much as they would have done if the assessment had not been made permanent, and the land had been re-assessed, is, in my opinion, to put such a construction upon Act X. of 1859 as to render it a violation of the pledge made by Government to the zemindars at the time of the Permanent Settlement; for there is no doubt in my mind that, to give the land-holder the full benefit of that engagement, they ought to

be allowed to collect as much from the land, and to enjoy as large a portion of the net produce, without an increase of the assessment, as they would have done if the settlement had not been made permanent, and the landholders had been re-assessed. In fact, they were to have the full benefit of the assessment being fixed for ever, instead of being subject to have it increased in proportion as the value of the land increased. But how can they get the full benefit of this if they are to be prevented by an Act of the Legislature (and that a retrospective one), or by a construction to be put upon it, from receiving as much from their ryots as they might have done if the assessment had been increased? I have shown that if the assessment had not been permanent, the land-owner in the case supposed would have been entitled to recover from the ryot Rs. 525 out of the net produce Rs. 700, *viz.*, the one-half of the Rs. 700 which he would have had to pay to Government as increase of revenue, and half as much more which he would have been entitled to take for himself. This would have left Rs. 175 as net profit to the ryot; in other words, the Government would have taken one half the net produce from the zemindar as revenue, the zemindar one-fourth in addition to the one-half which he would have had to pay to Government, and the ryot the other one-fourth, which would have given him Rs. 175 net profit. Whereas if the land-holder is to be restricted according to the rule of proportion to 300, being one-third of the gross produce, 900, he will receive Rs. 50 less than he would have had to pay to Government if the land had been re-assessed to the revenue; and the ryot instead of getting only one-fourth of the increased value which he would have got if the land had been re-assessed, will get four-sevenths of it, whilst the land-owner gets three-sevenths. How then can it be said that the land-owner enjoys exclusively the benefit of the public assessments having been fixed for ever when the ryot gets four-sevenths and he gets only three-sevenths of the net increase?

If a zemindar had by the express terms of a pottah granted lands to a ryot for 14 years at a certain rent, with an agreement that the ryot should always have a right to occupy at a fair and equitable rent, could it be contended, in construing such a document, that it gave the ryot a right to have his rent always so adjusted as to bear the same proportion to the gross value of the produce for all time as the old rent did to the old gross value? If such a construction would be unreasonable, how can it be right to put the proposed construction upon the words "fair and equitable" in the 5th Section of the Act?

If we go back to early days in search for customary rights, I think we shall fail to discover any custom under which the ryots received as much as one-half or even one-fourth of the net produce after paying all the expenses of production, or that, when a money rent was fixed, a ryot having a right of occupancy had a right to prevent the land-owner from increasing it beyond the proportion which such money rent, when fixed, bore to the gross value of produce.

Act X. of 1859 applies not only to the permanently settled districts, but also to the North-Western Provinces. If the Sudder Court of Agra should so construe the Act as to apply the rule of proportion, it will probably materially affect the Government revenue at the next Revenue Settlement. If such Settlement is to be made upon the basis of the rights created by Act X., and every ryot who has a right of occupancy whether existing before that Act or created by it, should be held to have a right to hold at a rent bearing the same proportion to the present gross value of produce as the old rent did to the former gross value of the produce, the land-owners cannot be assessed at most at a higher amount of revenue than the amount of rent which, according to the principle of proportion, they are entitled to receive from their ryots. If the land-owner is prevented by Act X. from raising his rent upon the cultivator beyond a certain amount, can the Government assess him by increasing their revenue to an amount up to which he will not be entitled to raise the rent of his cultivators? But if it should be held that the fair and marketable value of the land is the rule in the North-Western Provinces, how can it, in fairness and justice to the zemindars in the permanently settled districts, be said that they are to be bound by the rule of proportion? It is the same Act and the same words in this respect which are to bind and to be construed in the North-Western Provinces and in the Lower Provinces of Bengal. If the rule of proportion is not to prevail in the North-Western Provinces where the Government revenue is not fixed, and it ought not in fairness and equity to prevail there if the Government assess according to the net value, it ought not to be allowed to prevail and to be the rule in the permanently settled districts where the Government revenue is fixed. In the case now before us, Mr. Justice Campbell says—"This case has been decided on the principle of dividing the increased value equally between the zemindar and the ryot, and though in many cases such a decision might be roughly equitable, it cannot be applied in all cases, and is in this case a mere arbitrary guess at equity; a more definite rule is required."

Mr. Justice Elphinstone Jackson says—"The principle that the net increase in value of produce is to be divided half and half between the ryot and the zemindar is in fact no principle at all. It is established on no fair and equitable basis." Such a principle is not, in my

opinion, more rough than the principle adopted by Government in the North-Western Provinces in assessing the revenue at half of the net produce, and allowing the land-owner to take half as much more from his ryot as he pays to Government for revenue. The principle acted upon in enhancing the rent in this case by the lower Courts was not to enhance in the same proportion as the former rent bore to the former *gross* produce; but it is in my opinion more fair and equitable (if any rule of proportion is to be adopted at all) than a rent assessed in that portion, for it is in fact in precisely the same proportion, as, according to the finding of the Lower Courts, the former rent, Re. 1-10 per beegah, bore to the net value, Rs. 3-4, and at the same time it gives the ryot a net profit bearing the same proportion to the present net value as the former net profit of the ryot bore to the former net value.

The finding was:—

	Per Beegah. Rs.	A.	P.
Former gross produce	4	8	0
Expenses of cultivation	1	4	0
Net value	3	4	0
Rent	1	10	0
Net profit to ryot	1	10	0

This is more fair in my mind than the rule of proportion proposed to be adopted, without any proof that the rent was originally fixed upon the basis that the gross profits of the land were to be divided according to any such principle.

The rule of proportion clearly was not intended to be applicable to the first ground of enhancement mentioned in Section 17. It seems to me to have been intended that, if the rate paid by a ryot was below the prevailing rate, it might, if considered fair and equitable, be raised to the amount of the prevailing rate. It surely could not have been intended that it might be raised only to such an extent that it might bear the same proportion to the present prevailing rate as the old rent bore to the former prevailing rate.

So as to the third ground of enhancement, that the rent may be enhanced if the quantity of land should be proved by measurement to be greater than the quantity for which rent had been previously paid.

The Act did not mean that, if land should be increased in dimensions by alluvion, the tenant should necessarily pay for the new accretion rent at the same rate or in the same proportion per beegah as for the old cultivated land. If the rule of proportion did not apply to the first and third grounds, why should it be held to be applicable to the second?

If we were entitled to do what is roughly equitable, instead of deciding upon accurate and correct principles, I think the most equitable thing would be to give the land-owner three-fourths and the tenant one-fourth of the net increase according to the rule adopted in the North-Western Provinces of giving Government one-half, and allowing the land-owner to increase his rents upon his ryots until they amount to half as much again.

It could not be necessary for the protection and welfare of the ryots, and in order to prevent them from being improperly loaded with unwarrantable exactions, to pass a law which would prevent a land-owner in the permanently settled districts not only from taking such a proportion of the net produce as a land-owner in the North-Western Provinces would be allowed to take, but even to restrict him from taking as much of the net produce as the Government in the North-Western Provinces at present think it fair to take as the Government's share of the net produce. I need not point out the extent of injury which a zemindar will sustain if, throughout his whole zemindary, every ryot with a right of occupancy is to be converted into a part-proprietor with an interest equal to or even greater than that of the zemindar himself.

To raise the *status* of the ryot, and, instead of leaving him as an agricultural laborer without capital or property, to convert him into a co-proprietor with interests equal to or greater than those of the zemindar, would doubtless be very benevolent if one were to do so at his own expense. But for the Legislature to do so by sacrificing the rights of the zemindar, would, as it appears to me, so far from being fair and equitable, be an act of the greatest injustice.

I cannot therefore think that the words "fair and equitable" ought to receive such a construction as that proposed to be put upon them. Entertaining the opinion which, after much reflection and labor, I have formed in this case, I feel that I should not be justified in yielding that opinion out of deference to those of my learned Colleagues. On the contrary, I should consider that I was holding that the Legislature, in passing Act X. of 1859, had violated the engagement which the Government made with the zemindars at the time of the

Permanent Settlement, and had exercised a power which Government stated no longer existed when in Regulation II. of 1793 they declared, in the most emphatic language, that—"No power would then exist in this country by which the rights vested in the land-holders by the Regulations could be infringed, or the value of the landed-property affected; that land must in consequence become the most desirable of all property, and the industry of the people would be directed to those improvements in agriculture which were as essential to their own welfare as to the prosperity of the State."

I answer the first question by stating that I still adhere to the rule laid down in Ishur Ghose's case.

As to the 2nd question—

We are asked, if the customary rate of the neighbourhood has not been adjusted with reference to the increased value of produce, then on what principle is the enhancement of that customary rate to be adjusted?

I confess I do not clearly understand the question. There is considerable confusion in the question, and also in the judgment in which it was propounded, in the use of the words "rate of rent." Sometimes the word "rate" seems to be used as meaning the amount of rent, and sometimes as meaning the standard by which amounts are to be adjusted. The Courts have not the same power as a Collector at the time of making a settlement of fixing the rates payable by all the cultivators in a zemindaree or pergunnah. If no custom is proved, or no standard proved, the Court cannot make a new custom or a new customary standard. Each case must stand upon its own merits.

If the rule of proportion is to apply, and all ryots of the same class are entitled to be assessed at the same rate for lands of a similar description and with similar advantages in the neighbourhood, they ought all to be assessed at the prevailing ratio of rent to gross value of produce. But if there is no such prevailing ratio, there cannot be any customary rate of proportion. The rule of proportion adopted *cannot* then depend upon custom.

There is no finding or evidence of any such prevailing ratio, or of any other custom for adjusting the rents.

This, in fact, brings us round to the first question in cases where there is no proof, either direct or presumptive, that the ryot is entitled to have his rent adjusted according to a particular custom or by a particular standard, or in a particular proportion. In such case I think the proper rule for adjusting the rent is that laid down in Ishur Ghose's case.

The old custom, if any could be proved, would probably be found to give the ryots not more than a subsistence; the portion of the gross produce which was formerly allowed to them was not often more than sufficient to pay for their wages as laborers with such amount as was necessary to repay the advances for seed and implements of agriculture. I do not believe that any custom could be found which would give the ryot as much as half of the net value of the produce when the Government used to take half or two-thirds of it for revenue.

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PART II.

Extracts from papers regarding the Amendment of the Substantive Law of Rent in Bengal. From March 1875 to appointment of the Rent Commission.

Para. 1. For some time past there have been indications of renewed uneasiness and uncertainty here and there in some parts of Bengal, more especially Eastern Bengal, in the relations between landlord and tenant, particularly touching the rates of rent. I say renewed, because it will be in the recollection of all who are conversant with these affairs that there were troubles of this sort in 1873, which showed themselves markedly in the Pubna district.

Minute by the Lieutenant-Governor of Bengal dated 16th March 1875.

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7. Since these reports were written agrarian trouble actually began to occur during January 1875 in the eastern portion of the Dacca district. A dispute regarding rent broke out between the zemindars and ryots, and threatened to lead to breaches of the peace. If this should not be allayed, it was feared that similar disputes might break out in some of the neighbouring districts. The Commissioner was immediately instructed to warn all parties concerned of the consequences of a breach of the peace, and to invite them to settle their differences by private arbitration. Efforts are now being made to effect such amicable arrangement; whether they will prove successful remains to be seen.

8. It is always difficult to forecast the line which an agrarian people may take or what provocation might be given on either side. But the opinion seems gaining ground among well-informed persons, that if once any considerable trouble of this nature were to break out anywhere, the movement might spread to other places. In some localities the zemindars might get the upper hand, in other places the ryots. In some localities the strength of both parties might be nearly balanced, and might be equal to sustaining a contest for some time. All circumstances of this nature would either be altogether harmful, or else would do more harm than good.

9. In parts of Eastern Bengal there seems to be a disposition among the ryots to combine in something like leagues and unions. The object of such combinations may be various. If any success were obtained by these means, there is always a chance that the ryots might begin to combine in refusing to pay rent, whereon the zemindars might try to collect it by force. The consequences of a combination with this object would be serious in the present state of Bengal. It may be hoped that things will not, under any circumstances, come to this pass. Still we should guard against the possibility of such contingencies arising.

10. As yet no trouble has actually broken out since 1873, but as just seen, something of the kind was very nearly breaking out quite recently, and despite our efforts may yet break out. And the apprehension of similar occurrences elsewhere in Bengal is, I believe, present to many thoughtful minds. It may be therefore well to consider what measures the Local Government can take in the existing state of the law for doing justice to both parties, and for preventing agrarian trouble.

11. In such event it could take steps for causing the disputed matters to be speedily determined by appointing additional Native Judges, Moonsifs, and others, if necessary, under the supervision of a special European Judge. It could station extra police to maintain order, and ensure that the judicial enquiries should be carried out quietly. If the zemindars should attempt to act contrary to the judicial awards, it could easily apply a remedy. If the ryots should refuse compliance with the judicial decisions, and if necessity arose to execute decrees in large numbers, it could doubtless help in that process. But beyond and above all the things above-mentioned, it could use its influence to prevent either party from resorting to violence, and to induce them to submit to private arbitration.

12. These resources taken together are not inconsiderable, and if we cannot get more or better resources, we must make the best of them, and with them we must essay and strive to prevent agrarian troubles in Bengal. But in these resources there are, I think, several defects which might be easily remedied.

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Para. 1. When I was preparing the Bill now before the Legislative Council, for transferring to revenue officers the jurisdiction in rent disputes, under circumstances where agrarian disturbances might be threatened, it was represented to me that the Bill did no more than provide an effective procedure in cases of trouble, and contributed nothing towards the determination of the principles which should guide the local authorities in deciding these disputes: in other words, that the Bill related to procedure only, leaving the substantive law respecting rent and the relations between landlord and tenant exactly where it has heretofore been. This representation I knew to be quite correct. I desired to take up immediately the question of procedure and jurisdiction, as being necessary for the prevention

Minute by the Lieutenant-Governor of Bengal dated 25th May 1875.

of agrarian disturbances, which might at any moment threaten to arise. And I intended advisedly to avoid joining with this comparatively summary consideration, the questions which are frequently agitated regarding rent and regarding landlord and tenant; inasmuch as these questions are, in Bengal, perhaps the most difficult of all questions that can be raised, and must, if touched at all, occupy a long time and cause protracted deliberation, and might, even after all that, fail to arrive at a satisfactory solution. It would not, in my opinion, be expedient to defer rendering the procedure effective in circumstances of possible trouble and urgency, until we can achieve the as yet uncertain result of revising such an important law as the rent law.

2. Still, I bear in mind that many zemindars in Bengal are anxious that something more definite than anything which is now prescribed should be laid down by law regarding the determination of the landlord's share in the produce of the land or in the profits of the cultivation, and that some of our best revenue officers hold a similar opinion—Mr. H L. Dampier, for example, Secretary to Government, and Officiating Member of the Board of Revenue. It is much more difficult to gauge the views of the ryots or the tenant class; but so far as can be gathered from indications of their views, it seems probable that they entertain a similar wish. The apprehension seems to be gradually gaining ground, that sooner or later there will be more or less of contest between landlord and tenant, as to the principles on which the rate or amount of rent should be determined. It is expected that such contest may begin in Eastern Bengal, and then spread to other places. * * *

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4. Possibly some authorities or parties may consider that the landlord is not entitled to any share in the increased value of the land and its produce, and that such increase should be entirely for the benefit of the ryot. Now, every one will doubtless affirm that the ryots (especially the occupancy ryots, who are said to constitute the majority,) are entitled to a large share in the increase, and should be carefully protected in the full enjoyment of it. But to affirm that the landlord is not entitled to any share would, of course, be a very different proposition, which might be discussed on abstract grounds, but would be difficult to maintain. At all events, the rent law of 1859, which has now been in force for fifteen years, established the principle that the landlord is entitled to some share in the increase. When the law declared in 1859, that the rent of an occupancy ryot should not be raised unless under certain specified circumstances of ordinary occurrence, and re-affirmed this in 1869, it clearly contemplated that the landlord should have some share under those circumstances. The same principle has been repeatedly acted upon by the High Court of Judicature. We cannot, I think, recede now by any legislation from that principle.

5. It might not be difficult to assume on abstract grounds commanding general assent that the share of the landlord ought to be a certain proportion of the value of the gross produce: (though some authorities might prefer to take this value net after deducting the value of the ryot's labor), let us assume it for the sake of illustration, to be one-fourth, though I do not now say whether that is the correct proportion. But could this fraction, or any other fraction, be laid down in a law as the standard by which rent is to be regulated? Would not such a standard cause disturbance in the rent of different parts of Bengal? Would not any proportion that might be suitable in Western Bengal cause excessive enhancement in Eastern Bengal? Would not any proportion that might be suitable in Eastern Bengal cause considerable reduction of old existing rents in Western Bengal? Would not any proportion that might be suitable in Bengal cause undue variations in Behar? The case of Orissa might be regarded separately, as that is not under the permanent settlement. It might be answered that a suitable proportion could be ascertained for each of the main divisions of the country and then laid down authoritatively. But would there not be difficulty in defining the territorial limits of such proportions, so that they could be embodied in a law? It may well be that such diversity of the proportionate share exists in the several parts of the country, and is practically recognised in judicial decisions. But it is another matter to set it forth and stereotype it by legislation.

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8. Other methods of determining rent might be suggested, but, whatever method is discussed, difficulties will, I fear, present themselves in respect to legislation by reason of the diversity of local custom and the variety of the circumstances of the cultivation, of the rent, and of the tenure in the several parts of Bengal. The *desideratum* is some method of adjusting rent which would adapt itself to the diverse circumstances of the several parts of the country, and which could be laid down in a law. It is very hard to find such a method.

9. Still, if with the help of both parties concerned, landlord and tenant, and of the many experienced authorities in the country, a practical solution could be attained, such as would be

just to both landlord and tenant, and might be embodied in a law, I should be glad to do my part in the introduction of such a measure, which, if successful, would be of the highest benefit to the future of Bengal.

10. For the present I desire that a copy of this Minute be sent to each of the Members of the Board of Revenue,* of the Secretaries to Government, and of the Divisional Commissioners, with a request that they will favor me with their opinion on this difficult and important subject.

Para. 1. I have the honour, by desire of the Committee of the British Indian Association, to acknowledge the receipt of your letter No. 160, dated 21st January last, together with annexures, inviting an expression of the opinion of the Association on the principles on which the rent of ryots with a right of occupancy should be fixed.

Letter from the B. I. Association, dated 10th March 1876.

The Committee feel grateful to His Honour the Lieutenant-Governor for directing his attention to this vexed question. There has been so much written about it, and there is such a consensus of opinion as to the inefficacy of the present law in helping the courts in finding the principles on which the rent of an occupancy ryot is to be fixed, that the Committee deem it superfluous to point out its defects or shortcomings. For more than sixteen years Act X. of 1859 has been in operation, and the decisions of the High Court upon the rate of rent leviable from an occupancy ryot have been so conflicting and varying, that practically suits for enhancement upon the grounds mentioned in section 17 of the Act have come to a dead lock. And, the Committee submit, this conflict of opinion has been solely due to the want of precision or definiteness in the law. It is therefore essential to the ends of justice that the law should be amended, and that the principles on which the rates of rent are to be fixed should be set forth clearly and distinctly so as to make both zemindars and ryots to come to a fair and unmistakeable understanding about their mutual rights and obligations, and thus to prevent litigation; and in the case of the institution of a suit to enable the Court to arrive at an easy solution of the question at issue.

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The Committee have adopted the principle of the competitive rate, because it is a fair test of the value of land. It is a sure indication of the share of the produce of the soil which the cultivating ryot usually receives; and where it is low, from whatever cause, the occupancy rent as a rule is also low. There is therefore no apprehension of a violent rise in the rent of the occupancy ryot by reason of its being regulated by the competitive rate. It is, however, observable that where the competitive rate cannot be ascertained, that in those districts where the tenants-at-will have been converted into occupancy ryots *enmasse*, or where from other causes new lands are not often let out to tenants-at-will, or where the ryots may combine and resist payment of rent and thus defeat all enquiries for the ascertainment of the competitive rate, the Committee would recommend that the value of the gross produce of land on the average of the past three years (exceptionally bad years, such as those marked by drought or inundation being excluded from calculation) be divided between the zemindar and the occupancy ryot in the proportion of one-fourth to the former and three-fourths.*

* *Sic* in original.

The Committee submit that the present opportunity ought also to be taken to facilitate the recovery of rent by making necessary amendments in the rent law.

Under the circumstances, a law for the recovery of rent, which would be at once cheap, speedy, efficacious, and just to all parties, has become absolutely necessary. Having been invited by His Honour the Lieutenant-Governor to suggest a scheme for the amendment of the law in this respect I venture to submit the following:—

Memo. by Sir Jotendro Mohun Tagore, dated 20th August 1876.

Firstly.—Without disturbing the present rent kist or instalments which vary according to local usages, I would declare a specified quarter-day for the payment of the quarter's rent, failing which a suit for arrear shall lie. Where the kists are monthly, as they are for the most part, the zemindar shall be entitled to receive the rent according to monthly instalments; but if the monthly instalments be not liquidated by the quarter-day aforesaid, he shall be competent to institute an arrear suit.

Secondly.—In default of the quarterly instalment as suggested above, the zemindar or the rent-receiver shall be competent to make an application to the Collector setting forth the name of the defaulting ryot, description of the holding, and the mouza in which it is situated, amount of the annual rent, the amount due, and the period for which the same may be due, with a statement of accounts giving details of the jumma or rent, the instalments in

which it is payable, and the amount paid or payable by the ryot up to the end of the quarter. But the application and the account should be verified by the naib or gomastah, as the case may be.

Thirdly.—With a view to save costs and trouble, the zemindar should be allowed to sue the defaulting tenants collectively by an application written on a stamped paper of eight annas value. This sort of a collective suit is permitted under the North-Western Provinces Rent Act, and also under the Agrarian Disturbances Act. I recommend a stamp fee of eight annas for a collective suit in order to lighten the burden upon the ryot.

Fourthly.—On receipt of the application, the Collector should serve a notice upon the defaulting tenant or tenants, calling upon him or them to pay arrears due, with costs up to that stage, or to deposit the same in the Collector's kutchery, if he or they should contest the demand. The notice should state that, if the payment or deposit be not made within fifteen days from the date of service of notice, the tenure of the defaulter or defaulters shall be sold by public auction on the day to be fixed in the notice, which should be served by a single peon upon all the defaulters residing or holding lands in the same village: firstly, by affixing it in the zemindar's kutchery, if any, in or near the mouzah; secondly, at the police thana, if any, in or near the mouzah; thirdly, in some conspicuous part in the village; fourthly, by proclamation or beat of tom-tom in the village; fifthly, by affixing it on the land on account of which the rent is due. The serving peon shall procure "the signatures of three substantial residents residing in the neighbourhood in attestation of the notice having been brought and published on the spot. In case the people of the village should object or refuse to sign their names in attestation, the peon shall go to the kutchery of the nearest Moonsif, or, if there should be no Moonsif to the nearest thana, and there make a voluntary oath of the same having been duly published, certificate to which effect shall be signed and sealed by the said officers and delivered to the peon" (*vide* Regulation VIII. of 1819, clause 2, section 8).

Fifthly.—The sale of tenure should not be stayed unless the arrear claimed be deposited. In case the defendant make the deposit and propose to contest the suit, the Collector should try it under the procedure laid down in Act VIII. of 1869. The zemindar or the person claiming the rent shall be entitled to take out the deposit amount in giving proper security.

Sixthly.—Should the Collector find that the demand is not just, or is in excess of actual amount due, he should levy a fine upon the claimant not exceeding twice the amount so claimed, in addition to all costs, and should make over the damages so realised to the defendant by way of compensation. Should it appear that the accounts made up for the zemindar have been falsely or fraudulently prepared by the attesting servant of the zemindar, he (the servant) shall be liable to a criminal prosecution.

I propose the above procedure for the realisation of the rent from ryots having occupancy or mokurrari rights. I am aware that, under the present law, occupancy tenures are not saleable or transferable, but in many districts the usage sanctions sale for arrear of rent which is largely resorted to; in practice I would legalize the sale to that extent. The purchaser shall have the same right and interest that the defaulting tenant possessed. I should observe that the existing law enjoins the eviction of the occupancy ryot in lieu of the sale of the tenures; but the courts are generally reluctant to enforce this provision, inasmuch as it throws the ryot adrift. Under my scheme the ryot may, if he likes, buy in his own tenure, or if it be sold to a third party, he will obtain a fair value for it.

Minute by the Lieutenant-Governor of Bengal, dated 29th August 1876.

Para. 1. In continuation of my Minute of the 18th April last, regarding the improvement of the substantive law for the determination of rent in Bengal, I desire to record the following observations.

The proposals set forth in that Minute may be summarized thus:—

1st.—That a Bill be introduced as a supplementary to Act VIII. (B.C.) of 1869, for the further laying down of principles whereby rents should be decided between the landlords and the occupancy ryots, as defined by the Act.

2nd.—That this supplementary legislation be confined to occupancy ryots (who now form a large portion, perhaps the majority of ryots), leaving non-occupancy ryots or tenants-at-will to the operation of the existing law.

3rd.—That in cases of dispute, the rent of the occupancy ryots should be fixed at rates less by at least 25 per cent. than the rates ordinarily paid by non-occupancy ryots in the neighbourhood or in the district.

4th.—That even more favourable rates should be allowed to old occupancy ryots who had (either of themselves or by those from whom they inherited) held their lands 30 years and more.

5th.—That the ordinary rates payable by non-occupancy ryots should be ascertained by evidence in the usual way, but that, if from any cause this ascertainment should be found impracticable, then the Collector should be directed to ascertain; or if he failed, then the rent of a non-occupancy ryot should be calculated at one-fifth (20 per cent.) of the value of the gross produce as the basis for determining the rent of an occupancy ryot, the result of which would be that an occupancy ryot's rent, calculated on that basis, and being at least 25 per cent. less, would be 15 per cent. of the value of the gross produce.

2. The points embraced in these proposals are left undetermined in the existing law, though they nearly concern the interests of the people. The proposals were framed after the best consideration which I could give to the respective and relative rights and interests of landlord and tenant. They have been criticized, and will be criticized necessarily, from opposite points of view.

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10. As already seen, I am myself in favour of adopting some particular proportion of the value of the gross produce as a standard, especially, too, as this method has been recommended by the British Indian Association, and is believed to be approved by the ryots in many places and also by many official authorities. But though there is much *concensus* as to the principle of fixing some proportion, there is, as might be expected, difference of opinion as to what proportion should be adopted for occupancy ryots. There is a considerable interval between the 25 per cent. proposed by the British Indian Association and the 15 per cent. proposed by me. Some authorities who regard the case of the ryot with special consideration think that 12 per cent. should suffice. Perhaps some intermediate proportion between 15 and 25 per cent. might meet with a sufficient degree of acceptance from all concerned as a sort of compromise. There would probably be difficulty in fixing rigidly one proportion for the whole country, as such proportion would be somewhat lower in Eastern Bengal and somewhat higher in Western Bengal. But it might be enacted that the proportion might be taken at the discretion of the court within certain limits to be fixed by the law, say not more than 20 and not less than 15 per cent.

11. Thus I would still propose that where the non-occupancy rate can be ascertained, the occupancy rate should be fixed at something less than that by a certain percentage; and where that cannot be ascertained, the occupancy rate should be calculated by a certain proportion of the value of the gross produce.

Memorial of zemindars of Eastern Bengal.

Para. 1. That your Memorialists humbly beg to approach your Honour with an expression of their gratitude for your Honour's proposal to improve the present rent laws of these provinces "as regards the determination of the rent to be paid by the ryot to the zemindar." The present very unsatisfactory state of the law on the subject is well known to your Honour, as is evident from your Honour's Minute of 18th April last. Your Memorialists beg leave to offer a few remarks on the proposals contained in the Minute.

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7. It is highly injurious to the interests of zemindars that, owing to the operation of the occupancy clauses, and the uncertainty of the present law of enhancement, they are unable, notwithstanding this great demand for land, to get fair rents from their lands. While the rise of prices all round has greatly reduced the actual purchasing power of their rents, they are entirely precluded from reaping any benefit from the increased profits realizable from land in consequence of the very same cause. It is certainly not favourable to the development of agricultural industry that, in the face of such a large demand for land by classes of people hitherto unconnected with it, almost the whole quantity of culturable land in the country should be locked up in the hands of old ryots, so that new and enterprising cultivators cannot by any means be brought in to occupy the place of improvident, idle, negligent, or poor ryots, who cannot themselves reap the fullest advantage from the lands they hold, but who, nevertheless, having only to pay low rates of rent, do not give up their holdings, in the possession of which they are secured by the occupancy clauses of the present law.

8. From these considerations, it will be evident how urgently a re-settlement of the rent laws of the country has become necessary. Your Memorialists do not go so far as to solicit that the occupancy clauses of the present law, which alone have been the source of all the unsatisfactory litigation and serious disputes that have occurred of late, be entirely repealed. Your Memorialists simply pray that, while leaving worthy ryots, capable of marching along with the progressive circumstances of the times, in the full enjoyment of the occupancy right that has been given to them, the Legislature may remove all artificial obstacles to a natural

rise in the rates of rent. Clear, definite, and unmistakeable provisions to this effect, which will not leave much discretion in the hands of Courts of Justice or of the Executive authorities, will not only remove all the causes of the present unsatisfactory state of feeling between zemindar and tenant, by enabling the former at all times to get from his ryots really "fair and equitable" rents, but they will also prevent idle and improvident ryots, who are unable or unwilling to pay such increased rates as the circumstances of the country may demand, to hold on to their lands by the payment of only a nominal rent.

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25. Under the circumstances mentioned in this memorial, your Memorialists' pray, first, that the present rent laws of the country be altered with a view to facilitate due enhancement of rents and the prompt realization thereof; second, that the natural market or competitive rate of rent—such rate as any ryot would be prepared to pay for the land, subject to the condition that it be not higher than a certain maximum proportion of the gross produce—be declared to be the legal rent due from all ryots, without any deduction whatever in favour of ordinary occupancy ryots, or of those of 20, 30 or 40 years' standing; third, that the low rents paid by non-occupancy ryots newly settled in backward localities be not taken to represent competitive rates; fourth, that in cases where there is any doubt as to what the competitive rate is, 20 per cent. or one-fifth of the money value of the gross produce of land (taking an average say of three years) be declared as the rent to be decreed; fifth, that it be provided that in no case the rent of a ryot be enhanced so as to be more than double the previous rate, and that, after once a ryot's rent has been enhanced, no further enhancement be decreed within five years; sixth, that a decree for arrears of rent be made to have the effect of one for ejectment; and seventh, that some cheap, speedy, and effectual procedure be devised for the recovery of arrears of rent.

Memo. by Joy Kissen Mukerji, dated 14th September 1876.

Para. 1. The experience of several years of the operations of the present rent laws, and the opinions that have been recorded from time to time by the learned Judges of the High Court and by other public officers, show the necessity of an amendment of these laws, not only as regards the enhancement of rent, but also as regards the collection of rent. I shall dwell concisely on all the principal points on which, in my humble opinion, the law requires amendment, and shall reserve other points for future comment should the amendment of the law be determined upon.

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7. A great deal of confusion has often arisen, and a number of interpretations have been given by the High Court as to what constituted the same class of land. The class of men on whose testimony the nature and classification of land are usually determined scarcely understand the technical phrases by which they are required to designate the land, and there is oftentimes consequently some slight defect in the evidence, which leave the courts to dismiss enhancement suits on mere technical grounds. The old classification of lands, which is universally known and understood, should be restored, and the law of enhancement should be based on such classification.

8. The law should also clearly lay down the meaning of "adjacent lands." It has been held that lands must be of the same village, and also close to one another, before one can be called adjacent to the others. If the definition be thus restricted, it is clear that it would be very difficult in several cases to get evidence of neighbouring rates. Lands of the same description in an adjacent village should be included in the definition.

9. From the facts which have been recently collected on this subject it is clear that no uniform rule for enhancement of rent will hold good with regard to all the districts in these provinces. In places where there is a difference between the rents paid by the ryot and his sub-lessee for the same class of land—and such difference is easily ascertainable—the addition of three-fourths of this difference to the ryot's rent, and thus leaving him a margin of 25 per cent. as his profits, might be deemed a fair and equitable rule of enhancement. But in places where there is no such difference, or where it cannot be ascertained, the rule of enhancement must depend on the rates which the rent bears to the gross produce of the soil. Except in rare cases, this ratio, although it differs in different districts, remains definite and unchanged in every district in spite of all rise in the price of produce and periodical adjustments of rent. It is essential that this ratio for each district should be fixed by the law itself after a careful inquiry, and not left for determination by the courts; and it is also necessary that the law should also lay down not merely the ratio with regard to the staple produce of each district, but also with regard to any one or more crops which form important exceptions to the rule of proportion

which obtain regarding the staple crop. In the district of Hooghly, for instance, the zemindar's share of the produce should be half as regards rice, one-tenth as regards sugarcane, and one-eighth as regards potato.

Letter from the B. I. Association, dated 15th December 1876.

* * * * * * * Nearly eighteen years have elapsed since Act X of 1859 was enacted, and the prediction which Sir Barnes Peacock made in his minute referred to above has been verified to the letter. Sir Barnes Peacock wrote :—

"If section 6 continue in force, it is impossible to foresee where the litigation created by it will end. In one of the cases recently tried before Mr. Grey, it took two months to record the evidence which was given in one suit for the purpose of showing what was a fair and equitable rent to be paid for a few bighas of land. Each ryot has a right to have the evidence taken *de novo* in his own case; and if the right be insisted upon by every ryot who has occupied twelve years, whenever an attempt is made to enhance his rent, the Courts will be overwhelmed with vexatious litigation, and the landowner put to the greatest vexation and annoyance by the ryots to whom new rights have been given by section 6, and will probably be compelled to pay their revenue, or to have their estates sold for arrears before they can recover the rents due from their ryots. The Court was openly told, in the argument on the review case, "that litigation could not stop here."

The litigation which has followed this legislation, and the feelings which have flowed from it on both sides, have become a public scandal. A more important question cannot therefore engage the attention of Government at this moment than the consideration of the best means of making an end to this scandal, and putting the relations between the landlord and tenant on a sound and satisfactory footing which would be fair to both parties.

Letter from the Government of Bengal, to the Government of India, R. A. & C. Department, dated 22nd February 1878, No. 503.

Para. 1. In your letter No. 316, dated the 28th April 1877, the Government of Bengal was informed that the Governor-General in Council had been pleased to authorize the introduction into the local Legislative Council of a Bill to provide a more speedy and effectual procedure for the recovery of uncontested arrears of rent. It was requested that a copy of the Bill might be furnished to the Government of India, and it was added that His Excellency in Council entertained doubts as to the expediency of including in the Bill a provision making the rights and interests of an occupancy ryot liable to sale in execution of decree or transferable by private agreement. Upon this point it was desired that an expression of the opinion of the Board of Revenue and of Commissioners of Divisions should be submitted for the consideration of the Government of India.

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6. The procedure with regard to the execution of decrees is a matter upon which the British Indian Association lay more stress than upon any simplification of the procedure for the hearing of the suit. It has been sought to render the procedure in execution cases more speedy and efficient by providing that execution may issue on verbal application, that ejectment may be directed for arrears other than those at the end of the year, that an occupancy right may be sold in execution of decree, and that crops belonging to subordinate tenants shall be held liable to distraint. The Lieutenant-Governor has, with some reluctance, withdrawn the proposal that the occupancy right shall be generally transferable by private sale or other agreement. The weight of opinion is in favour of this proposal, as will be seen by a reference to the letter of the Board of Revenue, and His Honour is satisfied that such transfers would not have the bad effect which has been sometimes apprehended, and that they would not tend to transfer the land to classes whose ownership it might not be thought desirable to encourage. He believes that such a right of transfer would be much to the benefit of landholder and ryot. It appears, however, that the landlord class are strongly opposed to the concession of any general right of transfer, and the Governor-General in Council has expressed serious doubts as to the expediency of including such a provision in the Bill. The Bill therefore only proposes to recognize sales of occupancy tenures at the request of the landlord in execution of decrees of court, and to this the Lieutenant-Governor believes that no objection will be made.

Letter from the B. I Association, dated 20th November 1878.

Para. 6. Such being the case, the stress laid upon custom in regard to the transferability of the occupancy tenure is necessarily not well grounded. At the same time the Committee admit that the practice of the sale of the occupancy right is extending from various causes, that is to say, from the negligence of the landlord, collusion with the zemindar's amlah, imperfect evidence as to "custom," and conflicting decisions of the courts. In this way many middlemen have taken possession of occupancy tenures, and the decisions of the High Court recognizing the sub-letting of such tenures, to which the Committee will refer immediately, have facilitated the creation of middlemen with occupancy right.

7. The uncertainty which at present exists on the subject, owing to conflicting decisions of the courts and the haziness surrounding the "custom" relied upon, is a source of insecurity for both the landlord and tenant, and it is therefore highly desirable, as His Honour the Lieutenant-Governor seems to think, to remove that uncertainty; and it would, they submit, be consistent with the original intentions of the legislature, and just to both parties, to restrict the transfer of the occupancy tenure to the cultivating class. The object of the legislature in creating the occupancy right was to protect the actual cultivators of the soil from wholesale or arbitrary eviction; it provided that, so long as the ryot with the right of occupancy paid the rent, he would not be liable to ejectment from his tenure, nor to enhancement of his rent, except under certain conditions specified in the Act. The position of the occupancy ryot was thus assured, and the intention of the legislature to protect the cultivating class was fulfilled. Although the legislature, as the Committee believe, did not then contemplate that the occupancy right should be transferable, they are of opinion that, if this concession is to be made, it ought to be strictly confined to the cultivating class for whose sole benefit the right was created. To make it generally transferable would be inconsistent with the intentions of the legislature and detrimental to the interests of both the landlord and tenant.

Letter from the Government of Bengal to the Government of India, No. 3060, dated 11th Dec. 1878

Para. 4. The Lieutenant-Governor would strongly urge upon the Government of India the advisability of taking up seriously this question of making occupancy tenures transferable in Bengal and Behar. The only districts in which it might be undesirable to recognize such a right are the Sonthal Pergunnahs and similar tracts, where it is, for political reasons, necessary to exclude Bengali or alien settlers. Elsewhere, the measure would be a boon to the cultivators, and would in the end benefit the landlords. It seems to the Lieutenant-Governor the only way in which to secure any real and permanent improvement of the status of the cultivating classes from which Bengal derives all her wealth. What is much required in Bengal and Behar is a well-defined tenant-right, under which the actual cultivator shall have a direct interest in the improvement of the land, while the landlord has, at the same time, every facility given him for collecting his just dues and sharing in the unearned increment of the profits of the soil.

Letter from Government of Bengal to the Government of India, No 832, dated 3rd April 1879.

Para. 1. The nature and scope of the Bill "to provide for the more speedy realization of arrears of rent, and to amend the law relating to rent," now pending before the Bengal Legislative Council, were fully explained to the Government of India in my letter No. 3060, dated 11th December last. A copy of the Bill in the form in which it was introduced, and of the Statement of Objects and Reasons, is now enclosed for readier reference. Since that time the measure has been much discussed, not only by the officers of Government and others to whom it was specially referred, and by the Select Committee of Council appointed to report upon it, but also in the public press, vernacular and English, and a great mass of valuable suggestions has been brought together, which it has not yet been found possible to arrange and digest.

2. I am now directed to forward, for the consideration of the Government of India, a copy of the Bill as preliminarily amended by the Select Committee, together with their report on the same, and to invite attention to the remarks made in paragraph 14 of that report. It will be seen that the Committee urge very strongly the propriety of taking up the revision of the Rent Law of Bengal in a much more comprehensive manner than was contemplated at first by this Government. * * * *

3. The Lieutenant-Governor finds that the suggestions of the Select Committee in this respect have the entire support of the Board of Revenue and of all the more experienced Revenue officers in Bengal, as well as of the native community. It is felt certainly that the task is one of considerable magnitude and difficulty, in which it is impossible confidently to anticipate success, but the general opinion is that the attempt should once for all be made.

4. The Lieutenant-Governor believes that the best mode of dealing with the subject will be to appoint a small official commission of experienced Revenue and Judicial officers, who should in the first place prepare a careful analysis and digest of the existing rent law as set forth in the Acts relating to that subject, and in the decisions of the courts since the passing of Act X. of 1859. All the conflicting decisions of the courts and all the omissions in the Acts themselves would thus be brought clearly into view. The Commission would then consider the suggestions for amendment that have been put forward of late years, and endeavour to prepare a draft Bill embodying such additions to the substantive law, and such improvements in the

law of procedure, as may commend themselves to their judgment. The Bill with the report of the Commission would be published and circulated, and subjected to close scrutiny. The opinions of the High Court Judges and of the Divisional and District officers, Judicial and Executive, would be sought for and collated. The public would have every opportunity given it of being heard upon the subject: and eventually a measure based upon the results of this free discussion and deliberation might be introduced into the local Council with the sanction of the Government of India.

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